

No. 16102

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United States  
Court of Appeals  
for the Ninth Circuit

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INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839, and INTERNA-  
TIONAL UNION OF OPERATING EN-  
GINEERS, LOCAL No. 370,

Appellants,

vs.

MORRISON-KNUDSEN COMPANY, INC., a  
Corporation,

Appellee.

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Transcript of Record  
In Three Volumes

Volume III  
(Pages 769 to 1158)

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Appeal from the United States District Court for the  
Eastern District of Washington,  
Southern Division.

FILED

DEC 12 1958

PAUL P. O'BRIEN, C.



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(Testimony of Francis H. Bacon.)

Q. I am handing you that which has been marked as Plaintiff's Exhibit 6. Will you just examine it and see if that is the document which you understand and recognize as the Hanford Works Agreement?

A. That is.

Q. To your knowledge, Mr. Bacon, have there been any contractors performing work for the Atomic Energy Commission on the Hanford Works Project who have signed the Hanford Works Agreement?

A. This agreement, the 1952 agreement, to my knowledge, has been signed initially by Atkinson and Jones, joint venture, the Guy F. Atkinson Company, and J. A. Jones Construction Company; the Kaiser Engineers; Blaw-Knox Corporation, Chemical Division; and more recently in 1953, I believe, by the J. A. Jones Construction Company.

Q. During the period from 1952 to 1955, inclusive, will you [1060] state who were the principal prime contractors upon the Hanford Works?

A. Atkinson and Jones Company was just finishing up their contract in the early portion of 1952. The expansion program that followed was performed principally by Kaiser Engineers on the reactor expansion and Blaw-Knox Company on the separations expansion. At the conclusion of the Atkinson-Jones joint venture contract, a contract was entered into with the J. A. Jones Company as of May, 1953, to take over the portion of the former activity of Atkinson and Jones, generally referred to as minor construction.

(Testimony of Francis H. Bacon.)

Q. Well, are these the four contractors that you have named——

A. Those are the four, sir.

Q. ——who would have been the principal prime contractors?      A. Right.

Q. And you know of your own knowledge that they signed the Hanford Works Agreement?

A. I have seen their signatures on it, yes.

Q. I want to call your attention, Mr. Bacon, to the provision of Article XI entitled “Subcontractors,” and Section 5 thereof, reading:

“The employer states that the Atomic Energy Commission has agreed to require that [1061] compliance with 8, 9, 10 and 18, Section 1, articles of this agreement, will be a contractual requirement in all of its construction contracts.”

And I wish to ask you, with respect to that paragraph of the Hanford Works Agreement, in what manner, if any, did the Atomic Energy Commission carry into effect that provision?

A. In explaining that, you will probably understand why that language of that provision was a little clumsy with the word “articles” after the enumerated articles. We would have to go back to some preliminary meetings early in the year 1952 between representatives of the Atomic Energy Commission and the Pasco-Kennewick Building Trades Council.

Q. Well, are those the meetings in which counsel on cross-examination referred to some conversation by Mr. Shaw?

(Testimony of Francis H. Bacon.)

A. That is right, sir. And to very briefly summarize what happened there, the Atomic Energy Commission was contemplating a further expansion program throughout the United States. There was some question as to whether any of that or part of it or how much of it would be done at Hanford. The labor situation had on some occasions been a bit unsatisfactory during the previous years, and our Washington people were questioning that point, very [1062] frankly. We had occasion to invite the Building and Construction Trades Department from Pasco to come in and talk to us about this contemplated expansion program, and there was a commitment made at that time, as I believe Mr. Knapp testified in this hearing—the fact is, as I remember, there were two commitments made at that time. I recall that Mr. Knapp had indicated to the Commission that if this program were given to Hanford, he assured us that he could go back and put his house in order. There were many of the local unions that had drifted out of the Pasco-Kennewick Building Trades Council, and his assurance to the Commission was that if we had a project agreement which embodied this further construction work, that he could assure the Atomic Energy Commission that he could present a pretty solid front of all of the unions that are normally operating in the construction industry. That was his commitment.

He then turned to the Atomic Energy Commission and asked if we, in turn, could guarantee that if they were able to consummate such an agreement,



(Testimony of Francis H. Bacon.)

labor agreement, that the Atomic Energy Commission would see to it that all construction contractors who came to perform work on that project would become signatory to such a Hanford Construction Agreement. [1063]

I believe it was Mr. Oscar Smith, of our Washington office who was present, that convinced Mr. Knapp that such a commitment would be legally impossible for a government agency to make, and in almost the same breath I believe Mr. Shaw indicated that if the unions would sit down with all the potential contractors and work out an understanding that would apply to Hanford where the conditions would be somewhat uniform and would include the representation of all of the unions that are normally engaged in building construction work, that he would see to it that it became a contractual obligation of construction contractors to pay the economic conditions that might result from such a labor agreement.

Consequently, when this agreement was negotiated, a blank space was left there in the completion of the agreement and then somebody went back through the agreement and picked up each of the articles that had a cost of monies item in it and added it in.

Q. That accounts for the fact that those are interlined, rather than being a part of the general typing of the document? A. That is right.

Q. Was there, after this Hanford Works Agreement had been negotiated, Mr. Bacon, adopted a

(Testimony of Francis H. Bacon.)

standard form of language which was included in the contracts of [1064] contractors with the Atomic Energy Commission on Hanford Works?

A. Yes; as a result of those commitments that were made, both by the unions and by Mr. Shaw, language was adopted to make it an obligation of construction contractors to pay these money items as were determined to be prevailing by the Commission.

Q. I am handing you Plaintiff's Exhibit 1 in this action, and calling your attention specifically to Article 32 entitled "Prevailing Wage Rates and Allowances," which appears on page 10 of that portion of the Exhibit which is entitled "Supplement to General Provisions, Standard Form 23a," and I will ask you to examine that and tell the Court whether there are any portions of that Paragraph 32 which, to you, are standard provisions in contracts during this period from the Hanford Works Agreement until the particular agreement which you hold in your hand?

A. Yes; I notice this is the agreement between the Atomic Energy Commission and the Morrison-Knudsen Company, and this particular provision, as I remember, is unique in one respect.

Mr. Etter: Is what? I didn't hear you.

A. Unique.

Mr. Etter: I see. [1065]

A. The language of that section of the contract is substantially identical with that which was included in all construction contracts after the ac-

(Testimony of Francis H. Bacon.)

ceptance of the Hanford Agreement by the contractors in 1952, excepting for the first five or six words that state that "During the life of the Hanford Works Agreement." That portion was added for the first time in this Morrison-Knudsen Company contract.

Q. And was there any other contract, to your knowledge, in which those words were included than the contract, Exhibit 1?

A. I am quite certain that there was none other. The reason I say that is this, that at the time we entered into this contract, we didn't know it was going to be Morrison-Knudsen. We knew that an invitation for bid was going out which included a contract form and we knew that the job which was being bid was going to run some eighteen or twenty months or two years, and we knew that the contractors at Hanford, as a result of demands from five or six of the unions to withdraw from the Hanford Project Agreement, that the contractors were seriously thinking of terminating that agreement at the end of its anniversary year, at the end of 1955. Consequently, with the termination of that Hanford Agreement, the Commission realized that its commitment [1066] to require a contractor to do something beyond that date would be unrealistic, so with the preparation of this invitation to bid, which later resulted in awarding the contract to Morrison-Knudsen, those words were added to the usual words of that section.

Q. Well, now, if we eliminate the words which



(Testimony of Francis H. Bacon.)

appear at the very first of this paragraph, "During the life of the Hanford Works Agreement," and start with the words, "The contractor agrees" and to the end of that paragraph, is that the standard clause which was in other contracts?

A. That was the standard clause in all contracts subsequent to, I think, about October, 1952, whenever this Hanford Works Agreement was completed.

As a matter of fact, I might add, sir, that there were no other contracts let for construction by the commission until after the termination of the Hanford Works Agreement other than the Morrison-Knudsen contract, and those subsequent contracts do not have that provision in. They merely rely on the contractor's obligation to pay not less than the minimum wages as determined by the Secretary of Labor and contained in his contract.

Mr. DeGarmo: You may examine.

Mr. Etter: Just a few questions. [1067]

#### Cross-Examination

By Mr. Etter:

Q. Now, Camp Hanford, I think you said, is north of the city of Richland?

A. Right. Camp Hanford occupies the area that was formerly North Richland.

Q. I see.

A. As the construction camp, yes.

Q. Is it within the barricade?

A. No; the camp itself is not.



(Testimony of Francis H. Bacon.)

Q. Is not. Well, now, Benton County doesn't apply its laws or statutes to Camp Hanford, do they?

A. Yes; as far as I know. I shouldn't testify on that.

Q. Well, I understood that is a military installation, is that correct, Camp Hanford?

A. It is my understanding that the military police work with the deputies.

Q. They work with them?

A. From Benton County, yes.

Q. It is not your contention that the deputy sheriffs handle the discipline or violations of Camp Hanford?

A. I'm afraid I wouldn't be able to testify. I am not qualified on that.

Q. Now, everybody that works inside the barrier must have [1068] security clearance inside the barrier?

A. Right.

Q. That security clearance, as I gather, is secured following such investigations as may be required by the regulations by the F.B.I.; am I correct?

A. Either the F.B.I. or the Civil Service Investigation Agency.

Q. Yes. Are there any taxes paid by residents within the city of Richland other than sales taxes?

A. Up until last Thursday, no.

Q. Up until last Thursday, no. In other words, there were no real property taxes assessed so far as you—well, maybe not you—real property taxes, isn't that correct, state taxes?

(Testimony of Francis H. Bacon.)

A. I think that you are thinking of real estate taxes.

Q. That is what I said. A. Yes. No.

Q. Yes?

A. Last Thursday, the first houses were sold to their prior tenants.

Q. That's right, but at this time there was nothing like that? A. Uh-huh.

Q. The sales tax was the only thing. The property, as you say, is owned by the government and there weren't taxes [1069] paid by residents of Richland, isn't that correct, on real property?

A. That's right.

Q. Yes. The deputies who work within the barrier, as you say, they have two jobs, they are deputies besides another job they may hold, is that correct? A. They are all deputized.

Q. Yes, but I mean do they have other employment other than that of a deputy sheriff?

A. Oh, absolutely, yes. They are guards or police.

Q. They are guards or police? A. Uh-huh.

Q. Who pays those guards and police inside the barrier?

A. Their salaries and wages are reimbursed by the Atomic Energy Commission through its cost-plus-fixed-fee contract with the operating contractor.

Q. That's right. And, likewise, that is so with respect to the police force in Richland, is it not?

A. At the present time, yes.

(Testimony of Francis H. Bacon.)

Q. At the present time. Now, there are public services other than that, the fire department, for instance, is that correct? A. Right.

Q. Who pays the salaries of the fire department?

A. Under the same contract. [1070]

Q. They are all reimbursable, are they not?

A. At the present time, yes.

Q. And is that true of all the public services, the same arrangement made for reimbursement as is made for police and deputy sheriffs?

A. If you refer to public services as the usual activities of a municipality, yes.

Q. That is correct, I am referring to it in that sense. They are paid under the reimbursable agreements, is that correct? A. Right.

Mr. Etter: That is all.

Mr. DeGarmo: I have no further questions, Mr. Bacon.

The Court: All right.

(Witness excused.)

Mr. DeGarmo: I would like at this time, merely for the purpose of convenience in connection with oral argument and consideration by the Court, to have marked as Exhibits—I think those can be marked as a single exhibit—these are the five letters from the Secretary of War which I have furnished to you and which you have admitted in the requests for admissions.

Mr. Carey: That is correct. The only suggestion I have is that the ones Mr. DeGarmo [1071] fur-



nished are rather illegible and I have some that are more readable and I will be glad to furnish them.

Mr. DeGarmo: I think these are fairly legible that I am offering. I kept out a good legible copy. Maybe I cheated you.

Mr. Carey: You did, but I already——

The Court: These are photostats.

The Clerk: These are all quite legible.

Mr. Carey: There will be no objection.

The Court: All right, Plaintiff's 20 will be admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit No. 20.)

Mr. DeGarmo: With the introduction of those documents, if your Honor please, the plaintiff rests its rebuttal.

The Court: Do you have any further testimony?

Mr. Etter: We have no surrebuttal.

The Court: Would you gentlemen like to argue this afternoon? The alternative is tomorrow afternoon. I have tomorrow morning taken up with motions. [1072]

\* \* \*

(Whereupon, the trial in the instant cause was adjourned until 9:00 o'clock a.m., Wednesday, June 19, 1957.) [1074]

9:00 o'Clock A.M., Wednesday, June 19, 1958

(Whereupon, the trial of the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had:)

The Court: All right, proceed. [1075]

\* \* \*

(Whereupon, oral arguments were made to the Court by counsel for the respective parties, after [1076] which the following oral decision was rendered by the Court:)

### ORAL DECISION

The Court: When I was a boy, which was some years ago, it was quite the usual thing for boys to have pigeons and I had a pigeon loft, along with most of my friends, and one of the things I learned about pigeons was that the young squabs are heavier just before they leave the nest than they ever are again throughout their lifetime. I think a trial judge, in some respects, is a good deal like a squab pigeon. If a case is well tried, he is more heavily loaded with knowledge and recollection of the facts and even the law at the conclusion of the trial than he will ever be again, so that I do try, where it is possible, to decide cases immediately at the conclusion of the trial, although sometimes it is necessary to take them under advisement.

I think, switching metaphors abruptly, that a lawsuit, in some respects, reminds me of a bridge game. I am not an expert at bridge, but I do know that it is much more advantageous to be able to play out the hand on your first bid than on your secondary bid, and the Court in this instance has deprived the defendants of the privilege of playing out the hand on their original bid, which was that this contract

was not intended [1077] by the parties to apply to this job on the Hanford Reservation, and they have been obliged, and I have sympathized with their difficulties, to play their secondary bid, which I think appears to me to be pretty much of a 4-card suit.

The Court was under the impression, or at least one thing that influenced me in granting the motion to strike the affirmative defenses, was because I took the view that it wasn't a legal defense, and from what I have heard of the testimony here, I don't think that that conclusion would have been changed if I had heard all the evidence, and I was laboring under the delusion that it might shorten the trial if I granted the motion. As a matter of fact, I think it lengthened it, because I didn't properly appreciate the ingenuity of counsel in presenting this alternative defense.

The Court's position, as evidenced by the ruling on the motion to strike the affirmative defenses, is that there was a contract here, written contract, that by its terms applied to Benton County, and certainly that portion of the Hanford Reservation which lies within Benton County is geographically a part of Benton County, and the Court, rightly or wrongly, took the position that that contract had not been modified by parol evidence under the parol evidence rule. [1078]

Now, under that view of the situation, that means that there was a contract, and if there was a breach of it and the Court has jurisdiction under the applicable section of the Taft-Harley law, then, of



course, the plaintiff would maintain its action here and there would be liability on the part of the unions, unless the parties could show that by subsequent agreement of these parties the contract was not to apply to the Hanford Reservation or jobs on the Hanford Reservation or some other contract was made or some other contract adopted.

Now, certainly the burden, whether it is strictly affirmative defense—I think it is, and it has been pleaded as an affirmative defense—but certainly the burden would be upon the defendants to show that there was another contract and necessarily, under the proof here, a subsequent oral contract.

Now, what oral contract was there that superseded or modified or changed this written contract which the Court has held by its terms applied to all of Benton County? The only possible one that I can see here would be the oral contract made by the announcement of Mr. Knack at the afternoon meeting of January 5, 1956.

Now, it seems to me that for a court to [1079] hold, that under the circumstances there, with the background, and considering the relation of the parties and what they were doing, what they were attempting to do, it would be extremely unrealistic for a court to say that that was a contract to govern the terms and conditions of labor of these unions on a million, eight hundred thousand dollar construction job.

The statement wasn't even made in response to any question asked by any representative of these defendant unions. Mr. Knapp, who asked the ques-



tion, and it was, the evidence shows, almost an afterthought, the question was asked toward the close of the meeting after most of the discussion had terminated, Mr. Knapp, who doesn't represent either of these unions here, defendant unions, asked this question and got the answer in response. It doesn't seem to me that the Court could logically hold that these experienced business representatives of these unions, who certainly are capable, knew what they were doing, would rely upon a statement made in response to a question asked by somebody else, an oral statement made, as governing the terms and conditions of their members' work on this big contract. Certainly, they would have said, "Well, does that apply to my union? Will you give us a letter of confirmation on this so that we will be in accordance with the terms [1080] of the Taft-Hartley Act as to health and welfare payments and contributions?"

It just seems to me that the parties would not and, as a matter of fact, I think the situation is clearly here that they were not, relying upon that oral contract. They weren't there to make an oral contract; they weren't relying upon it. Their position was and has been that the written A.G.C. contract didn't apply to this job on the Hanford area. That is what the union members thought, that was their position, and that was counsel's position, and, unfortunately, the Court has taken a different view and deprived them of that defense.

Now, it logically follows, of course, that if there was no modifying contract, then this contract did

apply and was breached by the unions in failing to abide by the grievance procedures which were outlined in the contract.

I might just add this, and this is gratuitous, of course: A judge, after all, is only a sideline quarterback when it comes to conducting appeals to the higher courts and it is always easy and sometimes rather pleasureable to give advice if it doesn't entail any responsibility. It would seem to me that the questions, the real issues here, could be presented to the Court [1081] of Appeals—and this is the type of case that I think should be appealed and, as I have announced before, I have in mind putting everything in here in the findings and order that will determine the issues and make the findings in accordance with the requirements of Rule 54 so it will be a final order and will be appealable without awaiting the determination as to the amount of damages—but it seems to me that here is a case where it very well could be taken up on a short record that would present the two main issues here.

One is whether the Court erred in striking the affirmative defense and in precluding the defendants from offering evidence to show that this contract was not intended by the parties to apply to this locale and this job, and, two, the question, a substantial one, I think, and perhaps a close one, whether this plaintiff, who is not directly a signatory to the contract sued upon, may maintain the action under the Taft-Harley Act, and those questions do not depend upon the big record that would be made by all this testimony.

Of course, the defendants may very well wish to have the Appellate Court pass upon the secondary defense under the evidence here, but in my view their chances wouldn't be very good where the Court finds under this evidence that there was no oral contract and [1082] they would have to convince the Appellate Court that I am clearly erroneous in that respect. If I were a gambling man, I would take heavy odds on their prevailing on that score.

But that will be the Court's ruling then, and I assume that counsel will present proposed findings along the line of the Court's announcement here.

Mr. DeGarmo: We will, if your Honor [1083] please.

\* \* \*

The Court: As far as Item 17 is concerned, it's stipulated between the parties that that amount is \$6,432.64?

Mr. Etter: That is right.

The Court: Okay.

Mr. DeGarmo: I would like to call Mr. Reed at this time.

#### RAMON E. REED

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

#### Direct Examination

By Mr. DeGarmo:

Q. Mr. Reed, you have testified briefly in this action, too, have you not?                   A. Yes, sir.



(Testimony of Ramon E. Reed.)

Q. Will you state for the purpose of identity what relationship you had to the Hanford Project?

A. I was project manager on that contract.

Q. And for what period of time were you the project manager, Mr. Reed?

A. December, 1955, to and including March of 1957.

Q. Now, since the previous trial of a portion of this case, have you been in other positions with the company?

A. Yes, as project manager on two contracts in California [1093] that we had with the Gas-Electric Company, and then in July I went to Brazil.

Q. And for what company are you presently employed in Brazil?

A. Companhia Constructoria Corinto.

Q. Does that company have a relationship to the plaintiff in this action, Morrison-Knudsen Company?

A. Yes; Morrison-Knudsen Company is one of the group of contractors that compose the company, the sponsor.

Q. And did you come from South America for the purpose of testifying at this trial?

A. Yes, sir.

Mr. DeGarmo: Can I have this marked as an exhibit, please, and here is an additional copy that you can hand to the Court?

(Whereupon, Plaintiff's Exhibit No. 21 was marked for identification.)

(Testimony of Ramon E. Reed.)

Q. (By Mr. DeGarmo): Mr. Reed, I am handing you that which has been marked as Plaintiff's Exhibit No. 21 for identification. Will you examine it and state what it is, if you know (hands paper to witness)?

A. A construction schedule made out for a portion of the contract at Richland. It's for the 100-F area.

Q. Will you state, Mr. Reed, you say it is a construction schedule, it relates to the Hanford project, does it, [1094] a portion of it? A. Yes, sir.

Q. Will you tell the Court and counsel what are these numbers which appear on the left-hand side under the line "Item"?

A. That is the item number for each portion of the contract that we gave it for our books and for keeping the cost on that particular portion, and also for reference for the AEC to keep their records.

Q. By the way, was this particular portion of the work a lump sum bid or a unit price bid?

A. This was a lump sum.

Q. And does the lump sum for that particular portion of the work appear on this exhibit for identification? A. Yes, sir.

Q. What is the amount? A. \$908,380.

Q. All right. Now, what are the various items of work which appear under designation of "Component"?

A. That is a description of the various items of work involved in building this 100-F area portion of the contract.

(Testimony of Ramon E. Reed.)

Q. And how are the figures which are given under "Estimated Cost" in the third column, obtained?

A. They are obtained from our bid documents and also from [1095] the subcontracts.

Q. Do the total of the figures given in the third column amount to this \$908,380, which appears at the bottom of the column? A. Yes; they do.

Q. And, then, what are the figures which appear in the next column under "Weight of Percentage"?

A. That is the percentage that each item is with respect to the total amount of the dollar value of this portion of the contract.

Q. All right. Now, in the portion of the Exhibit for identification 21 which appears to the right of the column entitled "Weight of Percentage" appears certain months and figures. Can you tell us what those relate to and what purpose they have on the chart?

A. Well, that is the scheduling of the work, like, for instance, the excavation, the schedule to begin in the middle of December and be 100% complete by the middle of February.

Q. And do the figures that appear above the line represent the percentage as of a particular time?

A. Yes, that is the percentage we estimated that portion of that particular item would be complete at that time.

Q. Now, would a similar explanation apply to each of the other lines and figures shown on the right-hand portion [1096] of the exhibit?



(Testimony of Ramon E. Reed.)

A. Yes; it would.

Q. Now, there is a line which appears starting, or a graph line which appears starting at the approximate center of the page at the bottom and which runs to the upper right-hand corner, will you state what that line represents?

A. That is the accumulated progress of the job over a period of time. It's the percentage of work done each month added onto the previous month.

Q. Is that graph line obtained by graphing the other figures which appear on this sheet?

A. Yes.

The Court: That is according to the scale on the right-hand margin there, the bottom is zero and the top a hundred per cent, that is the way you figure it?

A. That is correct.

The Court: I see.

A. And, then, at the bottom is a line that gives you the percentage of the job that is to be complete each month.

Q. (By Mr. DeGarmo): Now, Mr. Reed, is this a schedule which was prepared prior to the commencement of the job or something which is prepared after the job commences? [1097]

A. It was prepared right after we started work.

Q. I note that in the lower portion of the Exhibit for identification appears the words "Approved for AEC" with the name of a Mr. Arndt underneath it. What relationship did this exhibit or chart have to the chart for the Atomic Energy Commission?



(Testimony of Ramon E. Reed.)

A. According to the chart we had to supply this document and AEC approved it. If they weren't in accord with the completion of the work——

The Court (Interposing): Did you have a definite completion date on your contract?

A. Yes; this is the one for 100-F and it was completed by October 1st.

Q. (By Mr. DeGarmo): 1956? A. 1956.

The Court: That was a provision of the contract?

A. Yes, sir.

Q. (By Mr. DeGarmo): All right. Now, what part in connection with payments which were to be received from the Atomic Energy Commission did this construction status chart which you have in front of you play?

A. Well, the way that percentages are used in figuring the estimate each month.

(Whereupon, Plaintiff's Exhibit No. 22 was marked for identification.) [1098]

The Court: Am I correct in assuming, Mr. Reed, that no penalties were imposed upon the plaintiff here for delay in completion?

Mr. DeGarmo: That is correct.

The Court: And your claim is for increased costs by reason of the delay?

Mr. DeGarmo: That is correct. We originally had an estimate, an item, as the testimony will bring out, for liquidated damages, but on completion of the job we had an extension of time which eliminated liquidated damages.

(Testimony of Ramon E. Reed.)

The Court: Then, your claim for damages is based upon actual delay?

Mr. DeGarmo: That is true. What I am proceeding upon now is to prove the amount of delay to which we are entitled by reason of the strike.

Q. Mr. Reed, I am now handing you Plaintiff's Exhibit No. 22 for identification and ask you to examine it and state what it is (shows paper to witness)?

A. This is the construction schedule and status chart for the 100-H area in which we had work at the Hanford Works.

Q. And was this portion of the contract also a lump sum contract? A. Yes; it was.

Q. And does the amount of the lump sum appear at the bottom [1099] of the third column?

A. Yes; it's \$868,800.

The Court: What is it that distinguishes these, is it the project number?

Mr. DeGarmo: Yes; up at the top, one of them is 100-F and the other one is 100-H, up at the top.

The Court: All right. Oh, I see. All right, go ahead.

Q. (By Mr. DeGarmo): And would your explanation as to the various items of the 100-H area chart, Plaintiff's Exhibit 22 for identification, and as to the method of makeup and handling and the purpose of it, be the same as you have already testified with respect to the 100-F?

A. That is correct. The item numbers have a

(Testimony of Ramon E. Reed.)

“two” preceding the item in the H area where it is “one” in the F area otherwise.

Q. The general setup is identical?

A. The general setup is the same.

Q. Now, Mr. Reed, I am sorry that I do not have enough of this next exhibit to give everybody one——

The Court (Interposing): I can use the original one, if you are short.

Mr. DeGarmo: Yes, this one I am, unfortunately, and I couldn't get a chance to get it photostated this [1100] morning. However, it is an intermediate exhibit and probably won't take too long.

(Whereupon, Plaintiff's Exhibit No. 23 was marked for identification.)

Mr. DeGarmo: Perhaps the Court could look at that one temporarily, while I am examining the witnesses as to this one.

The Court: All right.

Q. (By Mr. DeGarmo): Mr. Reed, having obtained the graph line which appears on Plaintiff's Exhibits 21 and 22 for identification, and the other information which there appears, did you, in company with other people from Morrison-Knudsen, make a schedule which showed schedule revenue as taken from these two identified exhibits?

A. Yes, sir.

Q. I am handing you now that which has been marked as Plaintiff's Exhibit No. 23 for identifica-



(Testimony of Ramon E. Reed.)

tion, and ask you to state what that exhibit is (shows paper to witness)?

A. This is the revenue tabulation showing scheduled revenue, actual revenue, and the revenue shortage.

The Court: Is that based on progress payments under the contract, is that correct?

A. The scheduled revenue is taken from these charts. [1101]

Q. (By Mr. DeGarmo): By "these charts" you are referring to 21 and 22 for identification?

A. Yes.

The Court: I suppose your revenue, as the job progressed, would be dependent upon the progress payments that were made under the contract, is that correct?

A. That is correct, which is in this second group, is the actual revenue.

Q. (By Mr. DeGarmo): The actual revenue is that which you actually received, is that correct, as shown by the books of the company?

A. That is correct.

Q. And the third column, which is at the right-hand side, which states "Revenue Shortage" is merely a mathematical deduction of the actual from the scheduled? A. That is correct.

Q. All right. Now, having obtained the figures which appear on Plaintiff's Exhibit 23 for identification, did you make some further use of them?

A. Yes.

(Testimony of Ramon E. Reed.)

Mr. Etter: Will you make these clear, do these refer to F, and that one to H?

Mr. DeGarmo: I am going to ask him a question on that to clear it up. (Q.) Mr. Reed, Mr. Etter has asked this question: On the first column under "Scheduled [1102] Revenue" appears certain figures. Now, what are those figures?

A. That is the total for the month of these two portions of the contract, 100-H plus 100-F.

Q. That would be the total revenue which you anticipated receiving according to the original production schedule?

A. That is correct, on these two items of the contract.

Q. And it is a combination of F and H?

A. That is correct.

Q. And the second one, is that a cumulative figure? A. Yes.

Q. In other words, each month you add the next one to it and then cumulate? A. Yes.

Mr. DeGarmo: Does that clear it up, Mr. Etter?

Mr. Etter: Yes.

Mr. DeGarmo: Will you mark this as an exhibit, please?

The Clerk: Marking Plaintiff's 24, your Honor.

(Whereupon, Plaintiff's Exhibit No. 24 was marked for identification.)

Mr. DeGarmo: Did I give you one for the Court?

The Clerk: No, sir.

Q. (By Mr. DeGarmo): I am handing you

(Testimony of Ramon E. Reed.)

now, Mr. Reed, [1103] a document which has been marked as Plaintiff's Exhibit 24 for identification. Will you examine it and state what it is, and also state what relationship it has to the Exhibits 21, 22 and 23 for identification (hands paper to witness) ?

A. This is a schedule and production chart for the portion of our contract in 190-F and 190-H areas. There is a line, a curve, showing the original scheduled revenue which is taken from, well, made up from these three exhibits and it is scheduled revenue shown on 23, is plotted in the first dotted curve.

Q. Now, let me see if we understand that, now. There is a line on this Exhibit 24 for identification which appears as the upper line and which is stated to be original scheduled revenue, is that correct?

A. That is correct; that is from the beginning of the work in December.

Q. Now, is that line the result of plotting on this chart the figures which appear on Plaintiff's Exhibit 23 as scheduled revenue?

A. That is correct.

Q. All right. Now, there is a lower line here that is entitled "Actual Revenue," from what source do you get the information to plot that line?

A. That is the actual revenue we received in accordance [1104] with our books and records.

Q. And do the figures which govern the plot of that line appear in Plaintiff's Exhibit 23 under the heading "Actual Revenue"?

A. Yes.



(Testimony of Ramon E. Reed.)

Q. Now, having made this chart, Mr. Reed, is it possible to determine from it the length of time behind schedule that this particular project was as to 100-F and 100-H areas at any given date during the period from the commencement of the job up until October 1st of 1956?

Mr. Carey: I think that is a matter for the Court to determine.

Mr. DeGarmo: Well, I think this witness is able to testify as to whether it is possible or not.

The Court: Well, his testimony will be controlling but I will simply take it as explanation of the document.

Mr. DeGarmo: And I am going to ask him to show how it is done.

The Court: Yes; all right.

A. Yes; it is.

Q. (By Mr. DeGarmo): Will you explain to the Court and to counsel, Mr. Reed, how you go about determining from this Exhibit 24 for identification what the actual progress is as to the contemplated or scheduled progress [1105] at any given date?

A. Well, the dotted lines showed the scheduled revenue, and the solid lines show the revenue actually received.

The Court: It would be just a matter of plotting on the graph the time difference between the two lines, wouldn't it?

A. Yes; just reading off between the two lines gives you the number of days behind schedule.



(Testimony of Ramon E. Reed.)

Q. (By Mr. DeGarmo): Now, what relationship does revenue have to progress under this type of arrangement that you had with the AEC, Mr. Reed?

A. Well, if you don't have any progress, why, there is just no revenue, if there is no work being performed there is no revenue being earned.

Q. Well, is there a direct relationship between progress and revenue? A. Very definite.

Q. Now, on Plaintiff's Exhibit 24 for identification, will you state what the difference was or how far behind the job was from scheduled progress as of March 22, 1956?

A. We were 18 days behind.

The Court: Wait a minute, I am not sure I got that date?

Mr. DeGarmo. That is March 22, which was the date [1106] the strike began.

The Court: Oh, I see, March 22, 1956; yes, all right.

Mr. DeGarmo: '56.

A. We were 18 days behind schedule.

Mr. DeGarmo: Will you mark this as an exhibit, please?

(Whereupon, Plaintiff's Exhibit No. 25 was marked for identification.)

The Clerk: Plaintiff's 25.

The Court: Let's see, March 22, wasn't it?

Mr. DeGarmo: Yes; 18 days behind at that time.

Q. As of September 30, 1956, Mr. Reed, how far

(Testimony of Ramon E. Reed.)

behind the scheduled progress was the job as of that date?

The Court: What is that last date?

Mr. DeGarmo: September 30, 1956.

The Court: Is that the completion date?

Mr. DeGarmo: No; that was not the completion date. I will explain in a minute why that date was selected.

The Court: All right.

A. We were 128 days behind schedule.

Q. (By Mr. DeGarmo): Now, is there some reason from the standpoint of the preparation of this graph that a date of September 30 or October 1st, 1956, was selected?

A. That is the date that we were back to the point that we [1107] were before the strike, that is, our work was progressing and it was going parallel to our original schedule, we were back where we figured it was on schedule.

Q. Well, now, you were still 128 days behind time, were you not? A. That is correct.

Q. But you, as of that time, your rate of progress and your schedule rate of progress were paralleling each other on the chart? A. Yes, sir.

Q. I am handing you what has been marked now as Plaintiff's Exhibit 25 for identification. Will you state what it is (hands paper to witness)?

A. This is a computation of the delay, number of days' delay, due to the Operating Engineers and Teamsters strike. On October 1st we were 128 days behind schedule. At the beginning of the strike we

(Testimony of Ramon E. Reed.)

were 18 days behind schedule, and so then at the end of the strike on June 6, there was a Carpenters and Laborers dispute which lasted twelve days, so 128 days minus 18 plus 12 gives the 98 days' total delay due to the Operating Engineers and Teamsters strike.

Q. Now, with respect to this stoppage or strike that you mentioned of the Carpenters and Laborers, will you state when that occurred with respect to the termination [1108] of the Teamsters and Operating Engineers strike which the evidence in this case has established terminated as of June 6, 1956?

A. That was right after the Operating Engineers and Teamsters strike, it was just a continuation.

The Court: The Carpenters and Laborers?

Mr. DeGarmo: And Laborers.

The Court: Oh.

Q. (By Mr. DeGarmo): And for what period of time did that strike of the Carpenters and the Laborers delay the resumption of work?

A. Twelve days.

Q. Now, other than the twelve days which was the actual period of the Carpenters and Laborers strike, what effect did that have upon the work after it was resumed that was not the same as the effect of the previous strike of the Operating Engineers and Teamsters?

A. It had no effect. I mean, we hadn't started up. It cost just as much to start up twelve days later as it would June 6th, it was just delaying the job twelve days.



(Testimony of Ramon E. Reed.)

Q. How many actual days had the job been down on account of the Teamsters and Operating Engineers strike? A. Seventy-six.

Mr. DeGarmo: At this time I now offer in evidence [1109] Plaintiff's Exhibits for identification 21, 22, 23, 24 and 25.

Mr. Etter: We have no objection.

Mr. Carey: Well, subject to cross-examination.

The Court: All right, they will be admitted, then, 21, 22, 23, 24 and 25 admitted in evidence.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 21, 22, 23, 24 and 25, respectively.)

Mr. Carey: I didn't get 23. I guess you are short a copy.

Mr. DeGarmo: I will try and get some copies made. It's an intermediate exhibit. I will try and get some additional copies. I thought I had some copies.

Mr. Etter: They are offered for the ultimate claim?

Mr. DeGarmo: That is right.

Mr. Carey: May I inquire for my own information?

The Court: Yes.

Mr. Carey: These, as I understand it, have a relation to more than one of your items?

Mr. DeGarmo: They relate to all items, that is the determination, our determination, of the period

(Testimony of Ramon E. Reed.)

of time of delay directly related to the Operating Engineers and Teamsters strike.

Mr. Carey: That you claim has relation to more than [1110] one item in your bill of particulars?

Mr. DeGarmo: To all items.

The Court: All items due to delay other than the Carpenters strike?

Mr. DeGarmo: That is correct.

The Court: Is it your position, Mr. DeGarmo, that the schedule that was worked out at the beginning of this work would be some evidence of what the rate of progress would have been, although it isn't conclusive, of course, is it, if they can show that you wouldn't have got along, that just actually your schedule wouldn't be controlling?

Mr. DeGarmo: I think that is an accurate statement. We normally find that we can follow schedules but there are always circumstances that change that.

The Court: You didn't up to the time of the strike?

Mr. DeGarmo: We have given them the benefit of that and deducted it, as well as taking off the twelve days from the Carpenters strike.

The Court: Yes; I understand that.

Mr. DeGarmo: Will you mark this?

The Clerk: Plaintiff's Exhibit No. 26.

(Whereupon, Plaintiff's Exhibit No. 26 was marked for identification.)

Mr. DeGarmo: May the record show that I am

(Testimony of Ramon E. Reed.)

now interrogating the witness concerning Claim Item No. 1? [1111]

The Court: Yes, all right.

Mr. DeGarmo: And I call to counsels' attention that we have changed on this exhibit the payroll taxes and insurance rate to 5.65, instead of 10%, as it appeared upon your original exhibit.

Mr. Etter: That is Item 1?

The Court: I don't know that I should bring it up, the point of it might be cleared up without my questioning, but I just had this thought in mind, Mr. DeGarmo, these are both lump sum contracts on which you were paid the full amount of the contracts?

Mr. DeGarmo: Surely.

The Court: That is correct, aren't you claiming both increased costs and duplication of profits?

Mr. DeGarmo: That is correct.

The Court: Wouldn't your losses be the complete cost? Where would there be an additional lost profit?

Mr. DeGarmo: I think by reason of the delay, you may call it additional cost, but our costs were increased rather sizably by reason of the delay and, therefore, you don't recover just costs by getting the actual dollars, you have some other items.

The Court: Well, it's a matter of difference of classifications, I assume?

Mr. DeGarmo: That is right. [1112]

The Court: If you classify it all as increased



(Testimony of Ramon E. Reed.)

costs, it would be that and some of it you put in as lost profits?

Mr. Etter: We can agree on this item. As I understand, the claim is now made of \$13,389?

Mr. DeGarmo: That is correct, sir.

Mr. Etter: In comparison to the bill of particulars which indicated \$13,940.28?

Mr. DeGarmo: Yes, the difference was in the payroll tax and insurance. Your accountant thought we were wrong in using 10% and we have revised that figure to 5.65.

Mr. Etter: Well, we will agree to that.

The Court: This is supervisory personnel that had to be paid regardless of whether the job was going on or not?

Mr. DeGarmo: That is correct, retained on the payroll.

The Court: Oh, it's stipulated that Item 1, "Overhead Salaries During Strike Period," it is now stipulated the amount is \$13,389?

Mr. Etter: Correct.

Mr. DeGarmo: I then offer Plaintiff's Exhibit 26 for identification.

The Clerk: It's offered, Plaintiff's 26.

Mr. DeGarmo: Is that admitted?

The Court: That will be admitted, then, if it is [1113] stipulated it will be in here to show in the record. [1114]

\* \* \*

The Court: Item 7, it's now down to \$896.01.

Mr. Carey: We will accept that.

(Testimony of Ramon E. Reed.)

The Court: All right, the record may show that that is accepted, then. Have you got an exhibit covering that?

Mr. DeGarmo: Yes, I am just putting that in. You will find that is identical except it's payroll taxes and insurance (shows paper to counsel Carey).

The Court: Item 28 can be admitted then, covering Item 7, showing \$896.01.

Mr. DeGarmo: I will just ask the witness a couple of questions.

Mr. Carey: Inasmuch as the item is admitted, I don't see any necessity of encumbering the record further. We are going to have an awful big record to print, anyway.

Mr. DeGarmo: Well, I have another reason to ask questions concerning this that relate to Item No. 16.

The Court: I see. Pardon me. I think as long as the exhibits are no more voluminous than this, I think it might be a good idea to put in your documents even if they [1124] are admitted because it makes a ready means of making computations for any tryer of the facts here.

Q. (By Mr. DeGarmo): Mr. Reed, with reference to Plaintiff's Exhibit 28, will you state, first whether after the strike had ceased, or perhaps I'd better phrase it, what efforts did you make after the strike had ceased, if any, to obtain the return to the project of the same employees who had been working for you before the strike?

(Testimony of Ramon E. Reed.)

A. Oh, we tried to get our previous employees back.

Q. Now, why did you try to get them back?

A. They were experienced in our methods, the forms that we were using, which were special forms, and the foreman and the men had just got to where they were working as a team previous to the strike. We wanted that same group of individuals returned to the job.

Mr. Carey: Your Honor, you are talking about Item 7 now?

Mr. DeGarmo: Yes, Item 7.

Mr. Carey: Well, we admit we are entitled to something on Item 7. We don't seem to be very far apart.

The Court: Maybe I am confused, I thought you had stipulated on Item 7 on the amount of \$896.01. I think Mr. DeGarmo was examining further because it was in reference to some other item. [1125]

Mr. Etter: Mr. DeGarmo says this has reference to Item 16, which is the deficiency loss.

Mr. DeGarmo: Explanation of this exhibit is necessary in order to bear on Item 16.

The Court: You were not able to get the same ones back?

Q. (By Mr. DeGarmo): Now, what did you find with reference to the strike as to the ability of these men which you tried to obtain who had worked for you previously?

A. We found that the best carpenter foreman



(Testimony of Ramon E. Reed.)

was not available and that the majority of our best carpenters had found jobs elsewhere and the carpenters that we got back, the first ones we got back, were a poor group of carpenters, as a rule.

Q. In explanation further, Mr. Reed, of this Exhibit No. 28, I notice in the right-hand column it refers to "Process Time," will you state what that has to do with process time?

A. That is the time that was required for a man to come to our office to get his application form. It's a General Electric or AEC form made out, taken to the GE, get it turned in and get his physical examination if one was required. It's the time required to hire a person to work on a project. [1126]

Q. Under the arrangements with the Union did you pay them a salary during this clearance period?

A. Oh, yes, they were paid from the time they came to the office.

Q. Now, you have mentioned that you lost two carpenter foremen. Do their names appear in the first column under "Terminated due to Strike"?

A. Yes.

Q. Will you identify them for us?

A. Yes, J. Cox and R. Young.

Q. And who were hired to take their place?

A. N. Williams and J. Boltman.

Q. Now, there shows on this Exhibit 28 the name of a Mr. Hooper, as being hired. What was the purpose or reason why he was hired?

A. Mr. Hooper was hired because he was hired to be superintendent of the 100-H area where Mr.

(Testimony of Ramon E. Reed.)

Beam had worked previous to the strike and was not available at the time of termination of the strike because he had been transferred to another job down in Oregon.

Mr. DeGarmo: May the record show that this testimony has to do with Item No. 8 of the claim?

The Court: All right.

The Clerk: Marking Plaintiff's 29.

Mr. Carey: For your Honor's information, there is [1127] going to be a big dispute about that item.

(Whereupon, Plaintiff's Exhibit No. 29 was marked for identification.)

The Court: Well, I assumed there would be some dispute about the efficiency loss.

Mr. Etter: There is a big dispute about that.

Mr. DeGarmo: That is one we are ready to meet.

The Court: Well, all right.

Mr. DeGarmo: I had better try real hard. This is 29, during the period of the strike, that is right. I might state to counsel that there is a change on the second sheet of this exhibit over the one which you have previously seen again brought about by the examination made by the accountant. It occurs on one item which still appears uniform, concrete form panel. It was pointed out that a certain portion of the form panels which had originally been showed here had been used as a part of the cost of the materials in Item No. 16 and, accordingly, as the evidence will bring out, that has been eliminated; and then there was an item on here of rental, which was

(Testimony of Ramon E. Reed.)

also in the same category, and that was eliminated entirely. With those two changes the exhibit is as originally presented, but the amount has been fixed.

Q. Mr. Reed, I am handing you now a document which has been marked Plaintiff's Exhibit 29 for identification, [1128] will you examine it and state what it is (shows paper to witness)?

A. This is entitled "Equipment Rental" of equipment at the job site and it gives the description of the equipment, number of units at the job site, source of rate, of the rental rate, and rate per unit per month, and rental per month, for the total number of units, and there are two columns, one rental for three months period, and one rental for a two months period.

The Court: This is on equipment that stood idle during the strike period and belonged to the plaintiff, is that right?

Mr. DeGarmo: That is correct.

The Court: And you claim the rental? I see, all right.

Q. (By Mr. DeGarmo): Now, Mr. Reed, let's go back on this exhibit; will you refer first to the left-hand column under "Description" and state from what source the information there shown was obtained?

A. This was obtained from our equipment records.

Q. Well, do you maintain equipment records of each item of equipment on the job? A. Yes.



(Testimony of Ramon E. Reed.)

Q. And then the second column is number of units, what does that indicate? [1129]

A. That is the number of pieces of a particular piece of equipment that was on the job.

Q. And then, under "Source of Rate" appears two types of letters, one is AGC, and one AED. Will you explain to the Court and counsel what those two categories mean, AGC first?

A. That is the Associated General Contractors.

The Court: That is their rental schedule?

A. Rental schedule.

The Court: And what is AED?

A. That is Associated Equipment Dealers rental schedule.

Q. (By Mr. DeGarmo): Will you state what use is made in the construction industry of those two equipment rental schedules?

A. Well, they are more or less a Bible for rental rates.

Q. Now, can you tell us why in the instance of the pickups and the automotive equipment you use AGC rates, whereas, in I think all other instances, AED are used?

A. I don't believe AED covered the rental rate for those pieces of equipment.

Q. Are the rental rates published in manual form that we are talking about, Mr. Reed?

A. Yes, they are. I believe those manuals come out yearly.

The Court: I assume that if an owner rented under these rates he would get a fair profit in ad-

(Testimony of Ramon E. Reed.)

dition to his [1130] cost, wouldn't he? These rates are designed to cover every item of cost on the equipment, plus a fair profit to the owner?

Mr. DeGarmo: Well, I think Mr. Reed can answer that. I don't believe that is accurate, but let him answer.

A. The AGC does not include profit.

The Court: I was just trying to inquire here, I don't know, but I wondered whether these were the rates at which equipment was to be rented, or the cost basis for those who owned it?

A. The depreciation and that is all, this is just bare rental rates.

The Court: I see. If you had a job, then, you couldn't rent equipment at this rate from an owner?

A. Yes, this would be the rate you would rent.

The Court: Well, then the owner must get a fair profit or he wouldn't rent it?

A. I don't believe that AGC rate included profit.

Mr. DeGarmo: I think that only the AGC does not include profit, and AED does. We recognize that.

The Court: All right.

Q. (By Mr. DeGarmo): Then, those two equipment rental schedules are the source from which you obtained the per unit rental which is shown in the fourth column, is that correct? [1131]

A. That is correct.

Q. And then, the rental per month is the multiplication of the number of units times the unit rate per month?

(Testimony of Ramon E. Reed.)

A. And the unit rate per month gives you the rental per month.

Q. All right. Now, on this schedule on Plaintiff's Exhibit 29 for identification appears a column headed "Rental for Three Months Period," will you state what is listed under the three months period?

A. The equipment that was on the project during the entire length of the strike and when this was made out we estimated that the strike would last about three months.

Q. Was this one of the exhibits which was made out early in the litigation?

A. Yes, it was.

Q. And has there been any change in the first sheet of it?

A. There has been no change in the first sheet, no, sir.

Q. Then, in the next column to it appears "Rental Equipment on Job Two Months." Will you state what that indicates?

A. That indicates the equipment that after the strike was in progress for two months, the equipment was moved to another contract.

Q. Then there was some of the equipment that was moved off of this job?

A. Yes, sir. there was. There was this list of equipment [1132] here.

Q. And do the dates that the equipment was moved off show in the next column?

A. Yes, they do.



(Testimony of Ramon E. Reed.)

Q. And then there is a final column here in which appear, I believe, on the same two figures opposite, "M.C. 414, Lorrane Motor Crane and Dragline Bucket," will you tell us what is the reason for the inclusion of those two items?

A. That piece of equipment was on the way to the job when the strike started and it was never used on the job, never used on this contract. It laid there two months and was moved out again to another contract.

Q. Well, now, what does this 4288.13 and 482.04 represent?

A. That is the cost of moving the equipment from where we got it to the job, to the job site.

Q. When equipment is moved off a job, one of the M-K jobs, Mr. Reed, to another M-K job, which one of the jobs stands the move-out cost?

A. The job that is receiving the equipment pays to have it moved to the job.

Q. And this particular piece of equipment when it was moved off the job, the move-out cost was paid by the contract to which it went?

A. The contract to which it was [1133] dispatched.

Q. What was the reason that this equipment was not used on this job?

A. We were not working during the first two months of the strike and there was no work in progress.

Q. Will you refer now to the second sheet, I want to point your attention to one item in the first

(Testimony of Ramon E. Reed.)

column, "Uniform Concrete Form Panels," will you state what those were and what use was made of them?

A. That is a patented form panel consisting of an angle iron framed around the outside, and a plywood facing constructed of pieces two feet wide by various lengths long, and this is the square footage that was actually owned by the company and on the job at this time.

Q. All right. Now, does this exhibit represent the total amount of the claim that was made on account of equipment rental or the ownership of the equipment during the period of the strike and the delay occasioned by the strike?

A. Yes, I believe it does.

Q. You have already stated that this was on a 90 day basis whereas I think some of the other items are on a 98 day basis, is that right?

A. Yes, this is made out before additional computations and additional study of the job and has not been changed. [1134]

Q. If the claim was presented on a 98 day basis, it would increase this?

A. It would increase the cost.

Q. I don't know whether you made that computation or not. Did you make a computation to determine? A. No, sir.

Mr. DeGarmo: You didn't make it? Somebody did, I will introduce that later. I will offer Plaintiff's Exhibit No. 29 at this time. I guess this is the identified exhibit here.

(Testimony of Ramon E. Reed.)

The Clerk: Let me have that other exhibit over there, too, will you, please?

The Court: If there is no objection, it will be admitted, then.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 29.)

Mr. DeGarmo: For the purpose of the record, this testimony has to do with what was originally in Item No. 9.

Q. Mr. Reed, in the damage claim originally instituted on behalf of Morrison-Knudsen Company, there was an item for liquidated damages, will you state what happened with respect to that item?

A. At the termination of the contract we are not charged liquidated damages for any delays that occurred. We [1135] were all relieved of that, the work was on schedule, there was enough delays caused by the owner to compensate for any delay that occurred.

Q. Then, at this time there is no claim being asserted for liquidated damages, is that correct?

A. No, sir.

Q. All right, let us next, then, for the purpose of the record, turn to Item No. 12, which has to do with general administrative expenses.

The Clerk: Plaintiff's 30.

(Whereupon, Plaintiff's Exhibit No. 30 was marked for identification.)

Q. (By Mr. DeGarmo): First, Mr. Reed, will



(Testimony of Ramon E. Reed.)

you state what is covered or contemplated by "General Administrative Expense"?

A. That is the expense of our home office at Boise and the district office and the home office expense. The job is charged a certain percentage of the revenue to cover the expenses of those offices.

Q. Will you state then, Mr. Reed, what services are performed or furnished by the home office and by the district office with respect to a project such as the Hanford Project?

A. Well, the home office handles company insurance, safety, labor relations and negotiations, financing, [1136] and it covers the expense of, oh, the president and various officers of the company that carry on business for company operations, and then, also, this percentage also goes to the district office to cover the district manager and the people who supervise the contracts within the district in which the district office does their bidding, carrying on new business, and so forth. It covers all cost of the district office.

Q. Then, the expense which the job itself has under its administrative overhead expense is the direct expense?

A. That is all, it's all charged directly to the job.

Q. It does not cover these things which you are now mentioning?

A. No.

Q. Now, will you refer to Plaintiff's Exhibit No. 30, or Plaintiff's 30 for identification, and will you explain, first, just generally, what the exhibit is?

A. Well, the title is "General Administrative

(Testimony of Ramon E. Reed.)

Expense'' and this is a determination of the administrative expense chargeable during strike.

Q. Now, upon what theory or basis is this exhibit prepared, Mr. Reed?

A. We have taken for April the number of days in April and the original scheduled revenue for that month and the same with May and June, and then added the total [1137] number of days for those three months and the 91 days the original scheduled revenue was \$702,380. The actual revenue which was the only month that we received revenue, was \$104,972, and the net revenue short was the difference between the 702 and the 104, or \$597,608. And then that divided by the 91 days in the three months gives us a net revenue short per day of \$6,550, and then the revenue, administrative expense revenue short for the period of 98 days was multiplied by 3%, which is the percentage the job is charged for general administrative expense, which amounts to \$19,257.

Q. Where does the 3% come from, Mr. Reed, if you know?

A. That is the percentage that the home office charges all contracts for the entire revenue on the job. That is charged on extra work as well as the original contract amounts.

Q. Mr. Reed, is this amount which is shown by this exhibit to cover the period of the actual strike or the period that the work was extended by reason of the strike?

A. This covers the period that the—wait a min-

(Testimony of Ramon E. Reed.)

ute—it cover the administrative expense that was lost due to the strike.

Q. During the 98 day period?

A. For the 98 day period. [1138]

\* \* \*

(Whereupon, Plaintiff's Exhibit No. 31 was marked for identification.)

The Clerk: Plaintiff's 31.

Mr. DeGarmo: May the record show that on Plaintiff's [1139] Exhibit No. 31 for identification the testimony of the witness will now refer to Claim Item No. 13?

Mr. Etter: We haven't any objection on that item, have we, Mr. Carey?

Mr. Carey: No.

The Court: Well, all right. It is stipulated, then, that Item 13 is \$675.75?

Mr. Carey: That is right.

Mr. DeGarmo: I do have a few questions of testimony that I want concerning this item which relate, again, to the other item, Exhibit 16.

The Clerk: It will be admitted then, your Honor?

The Court: Yes, it will be admitted.

The Clerk: That is 31.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 31.)

The Court: Just to make the record complete, now.

Q. (By Mr. DeGarmo): Mr. Reed, you have al-



(Testimony of Ramon E. Reed.)

ready testified that as a result of the strike that as of October 1st or September 30 of 1956, this project was behind approximately 98 days. Did your completion dates still face you under this contract at that time?

A. Yes, they did; you mean at the end of the strike?

Q. At the end of the strike. [1140]

A. Yes, they did.

Q. Now, after the strike had ceased and you were able to resume operations, what efforts did you make in order to try and pick back up to the same, just where you were before the strike, as far as production was concerned?

A. Well, we had to change our scheme of operation. We intended, our plans were, to use these patented forms in the F area and then in the F area to move from the F to the H area, and then that way we would reduce our costs of the material that would be required, lumber and form material, and also we would have experienced men throughout the job working with us on that type of form.

Q. Now, I am showing you Plaintiff's Exhibit 31 for identification which has reference to certain extra strength concrete. Will you state why some extra strength cement, I think it should read, rather than "concrete" was used after the strike ended?

A. The AEC permitted us and also we purchased our concrete from AEC and they designed this extra strength concrete for us in order to reduce our concrete form stripping time.

(Testimony of Ramon E. Reed.)

Q. And to what extent did the use of this extra strength concrete reduce your form stripping [1141] time?

A. Well, on various items it varies. I remember on beams, certain beams and girders, it reduced it from 21 days to 13 days. On equipment foundations it reduced it from 48 hour stripping to 40 hours.

Q. Well, then, what effect upon your ability to progress did the use of extra strength concrete have?

A. Well, it let us release those forms so that we could move ahead and increase our rate of production.

The Court: I think I announced that 31 would be admitted?

The Clerk: Yes, your Honor, you did.

Mr. DeGarmo: Will you mark this for identification, please?

The Clerk: Plaintiff's 32.

(Whereupon, Plaintiff's Exhibit No. 32 was marked for identification.)

Mr. DeGarmo: May the record show that the testimony of the witness will now relate to Item No. 14.

Mr. Etter: I don't think we have any dispute on that, did we, Mr. Carey?

Mr. Carey: No, we agree to that.

Mr. DeGarmo: This has been slightly reduced over the figure that you have, \$565; I assume you don't object to it?

(Testimony of Ramon E. Reed.)

Mr. Etter: Not a bit. [1142]

Mr. Carey: We still agree.

The Court: 2288? The figure is \$2,284.49? And it is stipulated that that is the amount of this item?

Mr. Carey: That is correct.

Mr. DeGarmo: I then offer in evidence Plaintiff's Exhibit No. 32, which is the tabulation of the effect of the wage increase.

The Court: Yes, all right, and 32 will be admitted to complete the record.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 32.)

The Clerk: Marking Plaintiff's 33.

(Whereupon, Plaintiff's Exhibit No. 33 was marked for identification.)

The Court: On Item 16 again?

Mr. DeGarmo: Yes, I am skipping Item 15 temporarily at this time. We had an exhibit that had to be retyped and it will be ready after lunch. This testimony of the witness will now relate to Item No. 16.

The Court: Yes, all right.

Q. (By Mr. DeGarmo): Mr. Reed, as an item of contract work will you state whether the concrete work on this project was a major or a minor part of the work?

A. It was a major part of the work.

Q. For the record, will you tell the Court what



(Testimony of Ramon E. Reed.)

the nature [1143] of the concrete work was that was performed on these two projects, 100-F and 100-H?

A. Well, it consisted of a slab underground down about ten feet and floor slabs and foundations for heavy pump foundations, and then above that there is that exterior building foundation, the foundation for the building over the pumps and then the heavy concrete pump foundations, and then there is a floor slab consisting of girders and reinforced concrete girders and beams around the pump foundations.

Q. In connection with the concrete work that you have described, what is involved other than labor; in other words, what equipment or materials are involved?

A. Oh, you have reinforcing steel to install, and you have form work to build, and you either use patent forms or built up forms. Now, we planned on using the patent form in this construction, but due to the strike and the increased, the fact that we had the step-up for progress after the strike, caused us to build the form panels on the job out of shiplap plywood.

Q. Now, you mentioned the nature of the concrete work, was this identical on F and H on the two buildings?

A. No, sir, they were not 100% identical but they were similar in nature but not definitely identical.

Q. Well, was there one of the structures which required [1144] more forming than the other?

A. Yes, I believe F area required more form per square feet than the H area.

(Testimony of Ramon E. Reed.)

Q. Now, will you state what your, I think you have covered this, in part——

A. More forms per cubic yard, pardon me.

Q. I think you have stated this, in part, but in order to have it relating to this particular item, will you state what your contemplated method of procedure was as to 100-F area and 100-H area prior to the strike and the one you were following at the time the strike occurred?

A. Well, our plans were to build up our personnel in the F area and put the foundation, that is, the footers on the ground in F, and maybe get that job going, and then pull personnel from that F area into the H area. The H area excavation was started after the F area excavation was completed. We were going to bring all the personnel into F and then move them into H as we needed them and they would be more or less trained with our methods and our foremen, and so forth, our supervision.

Q. What was the completion date, the scheduled completion date, for the 100-F area?

A. October 1st. [1145]

Q. And what was the scheduled completion date for the 100-H area?

A. December, 1956.

Q. All right. Now, after the strike had occurred and you were able to resume work, what changes, if any, did you make in your construction plans?

A. Well, we were behind schedule and the AEC was after us constantly to pick up, to bring the job up to production as soon as possible, and we saw right off that it wasn't possible to wait until the

(Testimony of Ramon E. Reed.)

forms became available in the F area to move to the H area for use over there, so the forms for all the pump foundations in the H area were job-built panels and we used the patent forms in the F area.

Q. Mr. Reed, when a job is commenced, or if a job is shut down and then recommenced with new personnel, what is the result as far as the rate of progress and efficiency is concerned?

A. Well, in starting up a job it takes several days for new men. They may be experts in their craft, but it takes several days for these men to get to working as a unit; they don't know their foremen and they don't know their superintendents and engineers, and so forth, so it takes a number of days for them to get to working as a unit, similar to an All-American football [1146] team, or any group of experts that get going, it takes some time to work together and form a championship team, so to speak.

Q. Now, does the Morrison-Knudsen Company on a project such as the Hanford project, keep a record of costs of concrete pouring and of the materials which go into the production of concrete?

A. Yes, we do.

Q. I am handing you Plaintiff's Exhibit No. 33 for identification. Now, without going into the several items, will you state generally what this exhibit is (hands paper to witness)?

A. That is a computation of the efficiency loss for labor and supplies.

Q. It's divided into labor and supplies?



(Testimony of Ramon E. Reed.)

A. Yes, there are two pages, one covering labor and one covering the supplies.

Q. And is it the first page which covers the labor costs?

A. Yes, the first page covers labor, excess labor.

Q. Referring, Mr. Reed, to this exhibit for identification No. 33, and to the first item "Labor Costs to March 31, 1956," I wish to ask you from what source that information was obtained?

A. That was obtained from the book cost.

Q. And then there is also a similar item "Labor Cost to [1147] September 30, 1956," from what source would that be obtained?

A. That would be the same, from the book cost.

Q. Then, in the preparation of this exhibit will you tell what was done in order to determine what, if any, excess cost there was from a labor standpoint in the pouring of concrete after the strike, as contrasted with what you had experienced prior to the strike; just explain the computation that appears there, the method of it, not the figures?

A. Well, the cost of labor, labor cost, prior to the strike is divided by the number of cubic yards and that gives you the cost per cubic yard of concrete up to March 31, and the same is done for the period from June 6 to September 30, and then the difference is the excess cost of labor per cubic yard after the strike; this is all labor, there is no material or anything in it.

Q. And what was found from this computation as

(Testimony of Ramon E. Reed.)

to the cost of the labor of concrete in the 100-F area before the strike and after the strike?

A. Well, it showed that there was a difference of \$11.30 per cubic yard greater after the strike than previous to the strike.

Q. What was the reason, Mr. Reed, other than those that you have already stated, why this difference occurred, if [1148] you know?

A. Well, it was due to the people getting used to each other and also the increased pressure that the AEC was putting on us to get back to schedule. We had to put on more people, more green hands, and the fact that the labor that we got wasn't as good as the labor that we had previous to the strike, the Carpenters.

The Court: There wasn't any penalty put on here, as I understand it, for delay in completion of the contract? Could you tell me at what stage of the work that became known to the plaintiff that it would not have to meet the completion schedule?

Mr. DeGarmo: At the end of the contract.

The Court: At the end?

Mr. DeGarmo: I have the proof here. [1149]

\* \* \*

February 24, 1958—2:00 o'Clock P.M.

(The trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit:)

## RAMON E. REED

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further, as follows:

## Direct Examination

(Continued)

By Mr. DeGarmo:

Q. Mr. Reed, prior to lunch I think you had just explained from Plaintiff's Exhibit 33 for identification the computation relative to labor which appears on Page 1 of the exhibit and with reference to the 100-F area, will you state whether the same method of computation was used with respect to the 100-H area insofar as it pertains to labor cost?

A. Yes, it was the same method, identically.

Q. Mr. Reed, if concrete forms are left unattended and unused for an extended period of time, we will say 30 days or over, what effect does that have upon their reusability?

A. If the forms are in place, constructed in place, it's [1151] easy to warp out of line, out of grade, and dry up. Some of these were narrow wall forms which we were not able to re-oil before we placed the concrete. It was difficult to strip and difficult to remove our form ties, and the lumber that was left piled out in the area had warped and much of it to the point where we couldn't use it again.

Q. Now, will you refer to the second page of Exhibit 33 for identification and tell us, first, just generally, what is the information which is given on this sheet?



(Testimony of Ramon E. Reed.)

A. This is the computation, the extra cost of material required due to the strike.

Q. First referring to the 100-F area which appears at the top of the exhibit, will you state from what source was obtained the figure of \$21,866.53 as the form rental and supplies?

A. That is taken from our books. Those are panels, form panels.

Q. Do you keep as a part of your records the costs of various items which go into the concrete work?

A. Yes.

Q. And then next appears "Lumber Prefabrication Forms," what does that have reference to?

A. That has reference to lumber that was used in prefabricated forms, the forms were prefabricated on the job. [1152]

Q. And scaffolding materials?

A. That is planks and brackets and materials that go into it, and we also had some patent scaffold that was used for scaffolding.

Q. Now, without going in detail into the others, these figures that are shown there as \$38,557.01, what does that purport to represent?

A. That is the total actual cost of concrete form materials and miscellaneous small tools and such for the 100-F area.

Q. And is there a similar computation below that for 100-A area?

A. Yes, there is.

The Court: That seems like an awfully large

(Testimony of Ramon E. Reed.)

item for small tools, nails, and things, \$5,000 worth of hammers and small tools.

Mr. DeGarmo: I think the bookkeeper will be able to explain that better than Mr. Reed. We will skip that at this time. We have the books here which will explain it.

The Court: All right.

Q. (By Mr. DeGarmo): In the computation of yardage poured, from what source would that come, Mr. Reed; in the 100-F area it shows as 4168 cubic yards.

A. That came from the books, that is, the actual yardage that was purchased from the [1153] Commission.

Q. Then, I notice on this exhibit as contrasted with the previous exhibit on labor, that you use an estimated cost per cubic yard for materials. From what source did that estimated cost come?

A. That came from our estimate bid documents.

Q. From the bid documents? A. Yes.

Q. Now, how do you go about determining what you use as an estimate of cost of materials on a job of this kind for concrete forms and the forming of concrete?

A. This, the bidding of this job, came right after the completion of a job in Seattle and using the same type of forms and similar work of walls, and so forth, and this was arrived at, or you arrive at figures like that, by referring to previous job experience and then applying the factor which in your

(Testimony of Ramon E. Reed.)

own mind was suitable to the job that you are bidding.

Q. I notice on this exhibit for identification 33, Mr. Reed, that you have a different estimated cost per yard of the form materials and concrete materials with respect to 100-F area than you do with respect to 100-H area, in the one case it's \$6.10, and in the other \$6.49; will you tell us why that was?

A. In the 100-H area there was more form area per cubic yard of concrete which, I think, would require more [1154] materials and, therefore, the cost per cubic yard for form material.

Q. Then, the third sheet, I take it, is merely a recompilation of the first two? A. Yes.

Mr. DeGarmo: I will not offer this exhibit at this time inasmuch as I have additional testimony concerning it. Will you mark these two exhibits, please?

The Clerk: Marking Plaintiff's 34 and 35.

(Whereupon, Plaintiff's Exhibits Nos. 34 and 35, respectively, were marked for identification.)

(Exhibits shown to defendants' counsel Etter.)

Mr. Etter: May I ask is this supported with one of the exhibits?

Mr. DeGarmo: The item of rental charges, that is right.

Mr. Etter: That is 29, is it not?

Mr. DeGarmo: Exhibit 29, Item 8, I believe it is.

Mr. Carey: If Mr. Etter has no objection I don't



(Testimony of Ramon E. Reed.)

suppose that I ought to have. I don't see that it serves any purpose because we are not questioning that these documents contain the figures shown on the previous exhibits, 34 and 35.

Mr. DeGarmo: 34 and 35, yes, I would like to have [1155] the witness identify them.

The Court: I haven't seen them yet, go ahead.

Q. (By Mr. DeGarmo): Mr. Reed, I am handing you Plaintiff's Exhibit 34 for identification, will you state what it is (hands book to witness)?

A. That is the Associated General Contractors equipment rental manual. It's a way of determining the rental for equipment.

Q. Is that the manual which was used by you as a basis for the rental charges in Plaintiff's Exhibit 29 when you referred to AGC?

A. Yes, one similar; I don't know whether this is the one or not.

Q. You don't know whether that is the exact one? A. No.

Q. I am also handing you Plaintiff's Exhibit No. 35 for identification, will you state what it is? (Hands book to the witness.)

A. That is a compilation of rental rates for construction equipment published by the Associated Equipment Dealers.

Q. Is that the one that is commonly known as AED rates? A. Yes.

Q. That is an '56 manual, is it not, 1956?

A. Yes.

Q. And that is the equipment rental schedule

(Testimony of Ramon E. Reed.)

which was [1156] used by you in the preparation of Plaintiff's Exhibit 29 for rental rates?

A. I would imagine it was.

Q. Can you check to find out whether it is or not, I don't want your imagination.

Mr. Carey: Neither do we.

Mr. DeGarmo: I would rather have it either true or false.

Mr. Carey: I think there has been an overplus of it already.

A. It isn't the one that was used.

Mr. DeGarmo: It isn't the one? Well, if it isn't the one, that is what we want to find out.

Mr. Carey: Your Honor, I am making this objection that they have introduced this Exhibit 29 and say that is the AED; in this other one the schedule contains certain daily rates. Now, as far as I am concerned, I don't question that some schedule does contain those rates. I don't see any point in encumbering the record, maybe Mr. Etter would agree with me.

Mr. DeGarmo: Perhaps I can clarify the reason that I was trying to offer it, Mr. Carey. The question was raised this morning by the Court as to whether profit was or was not included, and these documents show in and of themselves whether there is a profit and whether there is [1157] not a profit, rather than having someone testify to that fact; that is the only purpose of it.

The Court: More to satisfy my curiosity than anything else, if counsel don't question the basis of

(Testimony of Ramon E. Reed.)

the figures, the Court is not disposed to do so. He might question on cross-examination if there is a contrast as to what they include or what they do not include.

A. It appears that the ones in here are greater.

Q. (By Mr. DeGarmo): You mean that the AED rates shown in the exhibit are higher than the ones shown in the other exhibit? A. Yes.

Q. I suspect you used a '55 manual and not '56.

Mr. Etter: We object to any higher rates.

The Court: They are available here.

Mr. DeGarmo: It may be helpful on cross-examination.

The Court: Yes. [1158]

\* \* \*

Q. (By Mr. DeGarmo): Mr. Reed, I think you have already stated that there was an extension of time granted by the Atomic Energy Commission for the completion of the project which eliminated the imposition of liquidated damages under the contract. Will you state whether that determination had yet been made at the time that you left the project in late March of 1957?

A. No, sir, it hadn't been determined.

Q. At that time did you know whether you were going to get an extension of time or not?

A. Well, I knew that I was going to get some extension, I wasn't sure, we wouldn't get any liquidated damages. [1165]

Q. You didn't know how much? A. No.

\* \* \*



(Testimony of Ramon E. Reed.)

Cross-Examination

By Mr. Etter: [1166]

\* \* \*

Q. Now, in your Item 8 you have listed, Item 8, of course, there is listed "Equipmental rentals." Now, on Exhibit let me see.

The Clerk: Do you have 29, sir?

A. Yes.

Q. (By Mr. Etter): Do you have Exhibit No. 29, now? Isn't it the fact, Mr. Reed, that the charges that you have here on Item 3 of these different trips in company transportation, aren't they duplicated in the rentals of equipment that is set forth in Item 8?

A. No, sir.

Q. Beg your pardon? [1170]

A. No, sir.

Q. And you say there are no duplications of rentals that are shown in Item 8?

A. No, sir.

Q. And that these are separate and additional?

A. That is right.

Q. Items of expense?

A. This is strictly operating expense.

Q. No, but are there not rental expenses charged to those automobiles that you used?

A. Oh, certainly.

Q. Beg your pardon?

A. Yes, bare rental is charged in Exhibit 29.

The Court: One thing I was going to ask about this, I am not familiar with these rental rates that have been put in here, regardless of their origin. I

(Testimony of Ramon E. Reed.)

wonder if they were bare equipment rental on which the renter or the one renting them, was operating them, was obliged to pay for gas and oil and ordinary going upkeep, or whether the rental included the gas and oil?

A. No, they are bare rentals, just bare machinery rentals. Anybody that rents on that basis would have to furnish the gas and oil and expense of operation.

Q. (By Mr. Etter): I want to get into that in a little bit, your Honor. Now, on No. 29, the vehicles or the [1171] equipment is listed, is it not, on Exhibit 29, the transportation, or rather, the equipment that was used and the charges made for Item 3? A. That is correct, yes.

Q. The equipment is listed, is it not?

A. Yes.

Q. Now, can you tell me by looking at Exhibit 29 what equipment that was? A. Yes.

Q. All right, will you just tell me?

A. It's  $\frac{3}{4}$  ton pickups and Ford Ranchwagons.

Q.  $\frac{3}{4}$  ton pickups and Ford Ranchwagons?

A. There was a half ton pickup used, too.

Q. A half ton pickup? To the best of your knowledge would those be the vehicles, those five, that were used?

A. Yes, those would be the ones.

Q. Now, I notice that over here you have a rental per month charge of \$135, is that correct?

A. That is correct.

Q. And that was a charge, as you have explained,

(Testimony of Ramon E. Reed.)

that was taken from AGC rental rates and applied on Exhibit 29, to the charge, at least, for rental of these five vehicles?

A. That is right.

Q. That is right? Now, actually, in the company books [1172] these vehicles were the property of Morrison-Knudsen, were they not?

A. Yes, they were, as far as I know.

Q. Beg your pardon?

A. Yes, they were all owned by Morrison-Knudsen.

Q. And were they charged out of the equipment pool at Boise that the company maintained ?

A. Not especially Boise, but charged to the district.

Q. They were charged from a district pool?

A. Yes.

Q. Well, now, what was the actual charge against the job for the rental of this equipment?

A. I don't recall.

Mr. DeGarmo: Just a minute, Mr. Reed, I object to that question on the ground that some inter-company bookkeeping charge is no evidence of what was a proper or reasonable rental charge.

Mr. Etter: Well, I know, but this is a question concerning these people's losses here, so-called, in this operation, and we want to show that the equipment rental here is the equipment rental that is set by AGC but it is not realistic because they are not charged that against the job at all and that is not a loss; in fact, to allow the \$135 is to give them the



(Testimony of Ramon E. Reed.)

gain. In other words, we are going to show that they didn't rent these from AGC and pay \$135 [1173] a month; that the company rent them out of a fixed pool and paid their cost, which is allowable as damages.

Mr. DeGarmo: Well, now, that of course isn't exactly true. In the first place, what the company paid from its own pocket is purely company accounting; in other words, if the company maintains an equipment pool and when a piece of equipment goes on a company project the company charges itself, so to speak, ten dollars or twenty dollars, or whatever it may be, is no evidence. If we were going in and arguing that if it was twice those rates, I am sure Mr. Etter would not be in here saying those were proper rates, but it is purely an inter-company account.

Now, the question before this Court is not what this particular project might have been charged by Morrison-Knudsen Company, but what was the reasonable value of this equipment to Morrison-Knudsen Company and what it may charge out of Boise to this particular project has no evidentiary value at all.

The Court: I think the damages here are supposed to be on a compensatory basis, I assume, to compensation Morrison-Knudsen for their actual losses?

Mr. DeGarmo: That is right.

The Court: And I should think where you have a main office keeping accounts of costs here, that at

(Testimony of Ramon E. Reed.)

least it would be some evidence of costs, not conclusive, but it [1174] would have probative value to show what Morrison-Knudsen considered these vehicles were worth to them and what they were costing them on the job.

Mr. DeGarmo: Well, if counsel is going to tell the Court that he can show those items are costs, then I will withdraw the objection, but he cannot show that, all he can show is a figure.

The Court: Didn't you this morning refer to some figures out of the Boise office to justify some of these documents?

Mr. DeGarmo: No, sir.

The Court: I thought you did; I don't mean in connection with the vehicles, I mean in connection with some of these other items here. I thought you said that the Boise office charged so much for the job.

Mr. DeGarmo: General administrative.

The Court: General administration; so you used that as a basis, what the main office charged to the job, as a proportionate cost of the administration?

Mr. DeGarmo: That is correct.

The Court: If the shoe would work on one foot it should work on the other.

Mr. DeGarmo: Well, of course, oranges and apples don't always make equals.

The Court: No. [1175]

Mr. DeGarmo: Supposing we have a piece of equipment that we own and that has been fully depreciated and the company decides that for its own

(Testimony of Ramon E. Reed.)

internal accounting it is going to charge that piece of equipment out to this project at X dollars; now, that doesn't mean whether Morrison-Knudsen loses or wins by charging at that amount, that is what this particular job may bear for the purpose of internal accounting between the project and the home office, it has no relation to the project, whether that is the reasonable rental value of the equipment or not.

My objection is that the question that is asked here is: "What did Morrison-Knudsen Company from its home office pool charge this particular project for a particular bucket or a particular piece of equipment," is not evidence of its reasonable rental value and unless counsel can go beyond that mere figure and show that it does have some reference to actual or reasonable rental value, then I say to let the mere figure come in without a promise to show that they will follow it up, to show that it is reasonable rental value or that it is costs, as counsel says, that then it is improper testimony.

The Court: I am not too sure, Mr. DeGarmo, that fair rental value is the proper basis. Fair rental value could include, as I indicated this morning, would include property of the owner. I wouldn't rent an automobile unless [1176] I made some money out of it.

Mr. DeGarmo: That is correct; that is right.

The Court: And, after all, you are not entitled to lost profits for what you might have made had you



(Testimony of Ramon E. Reed.)

rented the equipment, you are using that equipment. I think if you got down to brass tacks, all you are entitled to is what you have lost, which would be the cost to you, including the depreciation and all the items that go into the cost of operation, paying taxes on it and the cost of operating an automobile; what did it cost you; and I think that we may fairly assume that an outfit like Morrison-Knudsen when they are charging things to a job are charging it on a cost basis, because they want to know how much profit they made out of it; so I think they do list it out on their books, it's fair to conclude that.

Mr. DeGarmo: Well, if the Court wants to accept that as a presumption, well, perhaps I am talking about nothing.

The Court: I am not taking it as a presumption, I am taking it as a reasonable inference that if they are taking cost-plus here, that they are trying to keep books here.

Mr. Carey: It's more than that, your Honor, it's an admission against interest.

The Court: Yes, I don't say that it is [1177] controlling, Mr. DeGarmo, it has probative value, it is subject to explanation if you want to show that these things are charged out at less than cost for inter-company bookkeeping.

Mr. DeGarmo: Well, my objection is in the record and I don't care to argue.

The Court: You don't care to argue it further. Don't say you don't care to argue it. Overruled, anyway.

(Testimony of Ramon E. Reed.)

(Last question read.)

Q. (By Mr. Etter): If you know.

A. I do not know.

Q. Would that be available in the company's records?

A. I imagine it is, yes, the rental rate.

Q. I see. Do you know this, Mr. Reed: is there a charge as a matter of practice, that is made in the company records to this job for these vehicles?

A. Yes.

Q. Beg your pardon? A. Yes, there is.

Q. There is a charge made to the job?

A. Yes.

Q. And that charge is what, made out of the central office at Boise?

A. Some of this would be out of the central office and some would be out of the district office equipment.

Q. I see. Now, that charge that is made against that [1178] vehicle, is that charge against the cost of the job? A. It's a monthly rental.

Q. It's a monthly charge against the cost of operation and doing the job, isn't that right?

A. Yes.

Q. Now, can you tell me whether or not Morrison-Knudsen paid \$135 for a  $\frac{3}{4}$  ton pickup during the time of this strike? Did they pay any independent equipment rental agency \$135 a month?

A. No, sir.

(Testimony of Ramon E. Reed.)

Q. Did they pay any independent rental agency any of the amount listed per month here on any of these five vehicles? A. No, sir.

Q. And what this \$135 is, is just what it purports to be, a charge per month provided by AGC?

A. It's a charge that you would have to pay if you were renting from an outside agency.

Q. That is right. Now, for instance, if you needed the  $\frac{3}{4}$  ton pickup truck down there and it was broken down and you couldn't get another one and you went to an independent rental depot and rented that, you would have to pay this amount, wouldn't you?

A. You probably would, yes, sir.

The Court: I am not sure whether you are referring [1179] now, Mr. Etter, to the vehicles in Exhibit 27 or the ones, all of them, in 29?

Mr. Etter: In 29 the ones that are listed, as I gather from Mr. Reed's testimony, the ones that were listed in the trips, used in the trips shown in Item 3, Exhibit No. 27.

The Court: Yes, I see. I understood, am I correct in assuming that all of these vehicles named in 29 were owned by the plaintiff; is that correct?

Mr. Etter: Yes.

The Court: There were not any on a rental basis here from outside sources? All right, go ahead.

Q. (By Mr. Etter): Now, this operational cost that you have here, is that included in any other item that you know of, of expense listed in any of the items where damages are claimed, Mr. Reed?



(Testimony of Ramon E. Reed.)

A. No, sir.

Q. Beg your pardon?

A. Not that I know of, no, sir.

Mr. Etter: Not that you know of?

The Court: Pardon me, I am not deciding anything here, I just want to get it straight in my own mind just what the exhibit involves. It seems to me, then, that the ten cents a mile which is charged in Exhibit 27 would have to be a charge on the basis of operating expense [1180]

\* \* \*

Q. (By Mr. Etter): Can you tell me, Mr. Reed, in Exhibit 29, does that exhibit include both what you term major and minor equipment?

A. Yes, sir.

Q. It does? Now, all of these items that I notice here in 29 are based, and as you have indicated, are based at the rental rates of either the AGC, Associated General Contractors, or the Associated Equipment Dealers, that is AED, is that correct?

A. Yes.

Mr. DeGarmo: You will have to answer out loud, Mr. Reed, the reporter can't get a nod.

A. Yes.

Q. (By Mr. Etter): And all of these items of equipment, [1184] can you tell me whether all of these items of equipment were or were not company owned and controlled through the Boise office?

A. They are all company owned.

(Testimony of Ramon E. Reed.)

Q. And controlled through the Boise office, or at least through Morrison-Knudsen?

A. Through Morrison-Knudsen.

Q. Yes, and is it not true that as to all of these items that are listed here, the contract was charged a monthly rate as to each separate item by Morrison-Knudsen?

Mr. DeGarmo: I wish the same objection to show to this question as to the previous one.

The Court: The record may show your objection to it whenever it comes up, Mr. DeGarmo, without repeating it each time.

Mr. DeGarmo: Thank you.

A. Yes, we had the monthly rental rates on it.

Q. (By Mr. Etter): You don't know what they are?

A. No, I don't have them.

Q. But that is the practice, is it not?

A. Yes.

Q. And those rates were charged to the job as to each one of these items?

A. Yes. [1185]

Q. Now, isn't a lot of this minor equipment, if you know, transferred into the contract at a nominal valuation of ten dollars per item, and then it's transferred out at the same nominal valuation at the completion of the contract?

A. That is correct.

The Court: I am sorry, I didn't get that last.

Mr. Etter: As to some of these items in minor equipment, that generally the practice on minor equipment is that, it may be a computing machine

or typewriter, it is transferred into the job at ten dollars, and then transferred out at ten dollars?

(Testimony of Ramon E. Reed.)

A. Sometimes you have to spend a pretty good sum getting them running.

Q. (By Mr. Etter): I mean, there is nothing in the books here that indicates that such was done as to these minor items? A. Yes.

Q. So that there is a very small direct charge, then, in the use of minor equipment, to the job, if at all, isn't that correct?

A. That is right, insofar as the charge to the job; however, there is upkeep and maintenance.

Q. Would you say that the ten dollars, this ten dollar charge, is really a control item; that is, to control [1186] the equipment in and out and know where it is, and follow it up, an accounting control method rather than anything else?

A. I would imagine so.

Q. You would imagine so? Now, there are two items, as I notice in the equipment rentals of concrete forms. I believe that you listed one item somewhere in one of these with respect to the concrete forms, oh, yes, here.

Mr. DeGarmo: I think you will find that that was the item that we had pulled out of here.

Mr. Etter: Oh, is that right?

Mr. DeGarmo: Yes, your accountant discovered that there was one item in here he had discovered was included in the cost of materials in the revised second sheet. He took that out. I can tell you what the amount is, to tie it in.



(Testimony of Ramon E. Reed.)

Mr. Etter: The revised amount that you have, I do remember that now, but I don't think I got the amount.

Mr. DeGarmo: I will see if I can find that.

Mr. Etter: All right.

Mr. DeGarmo: Yes, there was 7,498 square feet of uniform concrete form panels, is that the item that you find there, at nine cents, at \$2,024.46, and patent scaffolding at \$525. [1187]

Mr. Etter: \$525, scaffolding, and what was the other now?

Mr. DeGarmo: Well, there are three items of 2,755 and 50 and 4,693, a total of 7,498 square feet of concrete uniform form panels at nine cents per month for three months, or \$2,024.46, which was eliminated from that Item 8 on the revised second sheet.

Mr. Etter: What would be the total claimed for that now, Mr. DeGarmo?

Mr. DeGarmo: Well, the total claimed now is \$27,043.13.

Mr. Etter: I see. Actually, am I right, weren't these concrete forms really in two classifications, those that you own and those that you rented?

Mr. DeGarmo: Yes.

Mr. Etter: You cleared that up, all right.

Q. Now, going here to Item 11, I think it is, it's my understanding from Exhibit, it's Exhibit 25, the engineer's projection, I think it is, yes, 24, Stanley, would that then be the engineer's projection? Take

(Testimony of Ramon E. Reed.)

that, will you, Mr. Reed, and I will inquire a little bit about that (hands paper to witness). Now, this projection, as you explained, indicates the number of days projected for the completion of the job, does it not? [1188]           A. Yes.

Q. And, likewise, as I understand, this job should have been completed in December, is that correct, of 1956?

A. One area was October 1st and the other December 1st.

Q. Yes, but the entire project, taking the F and H areas together, would have been December?

A. That is correct.

Q. Now, at the time of the strike did you say that you were 18 days behind schedule on March 22, the day of the strike?           A. Yes.

Q. Now, when you speak of 18 days you are referring, are you not, to 18 working days?

A. No, 18 days over-all, over-all days.

Q. Well, were you behind more than that if you took it on a revenue basis, I mean, I understand this one line, the dotted line, projects revenue, does it not in particular times, is that correct?

A. No, one line is the scheduled revenue and the other is the actual.

A. No, one line is the scheduled revenue and the other is the actual.

Q. One line is the scheduled revenue and the other is the actual? Now, your scheduled revenue as of March, the end of March, 1956, could you tell

(Testimony of Ramon E. Reed.)

me from looking at that chart how much it was, how much it would be, or would you be required to check your books? [1189]

A. \$163,000, it looks like. Let's see, at the end of March would be four hundred.

Q. Wouldn't it be over \$600,000?

A. Yes, six hundred and some thousand dollars.

Q. Approximately \$625,000, that is the figure that we arrived at in our examination, would that be fairly correct; I am just taking it as around there?

A. I think somewhere in there, 623 or 624, somewhere.

Q. The revenue actually received in March prior to this strike, just prior to the strike, was about \$398,000, isn't that correct? A. That is correct.

Q. So that the difference between the \$625,000 and the \$398,000 you were behind that much revenue even before the strike, isn't that correct?

A. That is right.

Q. And do you know how many days of revenue that equals you were behind at the time of this strike? A. No, sir, I don't know.

Q. Well, ordinarily, going up to about the end of March on the basis of your contract your revenue days were approximately 120 or 122, wouldn't that be correct? A. Yes.

Q. Starting your contract in December?

A. Yes, just about. [1190]

Q. And the average revenue per day would be the amount that was due at the end of March, divided by



(Testimony of Ramon E. Reed.)

the number of days, would that be correct? I mean, that would be your daily revenue based upon your projection?

A. That would be the average daily; of course, starting out you wouldn't.

Q. That would be the average daily, would it not?

A. Yes.

Q. And, consequently, the only way you could determine, Mr. Reed, how far back you were in revenue would be to take the average per day and then divide it into the difference between the revenue received and the revenue expected, to determine how many revenue days you were behind, isn't that right?

A. You are a little ahead of me, I don't quite follow you.

Q. Well, let's say that the amount of projected revenue after, or in March, at the end of March, the amount of the projected revenue on your chart here was \$625,139, and that at that time construction days or, rather, the days that elapsed in the contract in the total of 122, dividing 122 into the amount of projected revenue, at least my figures show, would give you an average per day of \$5,124 per day projected revenue over that period of 122 days?

A. Yes. [1191]

Q. However, the revenue received on that date was only 398 thousand and some odd dollars, so, dividing that amount by the average, actually you would only have 78 revenue producing days of

(Testimony of Ramon E. Reed.)

\$5,000, and you would be 44 days revenue behind on your projection; do you follow me?

Mr. DeGarmo: If he can, he is better with figures than I am.

A. I am not sure, I am not quite sure what you are driving at.

Mr. DeGarmo: We have our theory of this, we shall be able to explain it.

Q. (By Mr. Etter): As I understand it, the way you project this, when this projection reaches a particular point in line with the amount of money that you have over on the left-hand side, you expect at the end of so many days to be able, if you merge your projection schedules, you expect to have received so much revenue from this job, isn't that right?

A. That is right. At the end of each month there will be a certain percentage but that is not an average, you don't have an average over that period.

Q. At least, if you projected it, this broken line was your own projection, was it not?

A. Yes, sir, that was scheduled revenue, but that is not [1192] based on an average per day for over a certain time.

Q. No, but it was scheduled?

A. Yes, it's scheduled.

Q. So that at the end of March, if you look at that, you had scheduled revenue coming to the end of the job of \$625,000, that was your scheduled revenue, and yet the revenue that you had received was behind schedule, and you had only received on that

(Testimony of Ramon E. Reed.)

particular day \$398,000; so, isn't it true that you were nearly \$300,000 behind your scheduled projected revenue?      A. That is right.

Q. So, if you wanted to break it down into days, then you can average, first, what the projected revenue per day is, and what it actually was?

A. You can't average it, no, sir.

Q. Well, in any event, your projected scheduled revenue was only half, about, what it should be, at the time of the strike, isn't that right?

A. That is about right, there is a little more than half.

Q. Beg your pardon?

A. Well, four hundred at the third.

Q. You were way behind your projection?

A. Well, we were 18 days behind.

Q. I am not talking about the number of days, I am talking about the revenue you were behind; you projected one line [1193] for revenue; now, you were behind almost \$300,000, weren't you?

A. No, we was behind 200 and some thousand.

Q. \$230,000 projected revenue you were short on your own projection, isn't that correct?

A. That is right.

Q. All right. Now, there was a loss on this contract, eventually, was there not, or do you know?

A. Due to the strike.

Q. Beg your pardon?

A. Yes, there has been a loss.

Q. And do you know how much that was?

A. No, sir, I don't know the final figure.



(Testimony of Ramon E. Reed.)

Q. You don't know the final figure? All right.

A. I don't think you can determine a final figure.

Q. Beg your pardon?

A. The books haven't been closed, you can't determine a final figure.

Q. I see. Now, on your general administrative expenses under Item 12 you computed those general administrative expenses on an estimated figure of 3% on a loss of revenue as you had projected it in this Exhibit No. 24, is that correct?

A. That 3% is not estimated, that is what the job is charged. [1194]

Q. The job is charged that over a 98-day period, isn't that right?

A. The job is charged that on the revenue that is taken in.

Q. Well, now, if you were 200 and some thousand dollars behind at the time the strike occurred, does that properly reflect a loss to you when you were behind that much on your own projection?

A. That doesn't have anything to do with it, that 3% is money that the business in Boise and Seattle all goes in, regardless of that.

Q. Yes, but you are claiming an item because you say that you had a certain loss of projected revenue, you have broken it down here in a chart, I think, you had a certain loss of projected revenue. Well, here it is in "General Administrative Expense," you have got original scheduled revenue and that is the schedule, is it not, that appears on 24

(Testimony of Ramon E. Reed.)

here, on Exhibit 24?

A. Yes, sir.

Q. And you are charging certain administrative expense and certain profits, as I understand it, based upon this projected revenue and the loss that the company sustained from the projected revenue because of the interference with your construction as a result of this strike, isn't that right?

A. That is right, the job extended 98 days, that is the [1195] days, or the other 98 days, there was 98 days of this that the main office had to do, they were depending on that money.

Q. Yes, at the end of the first 122 days when your scheduled revenue should have been \$625,000 without any strike or anything else on, you were estimating as a matter of fact, it was only 390 some thousand dollars, and yet you want to charge the defendants here with percentages of loss of projected revenue, isn't that what you are doing?

A. That is right.

Q. That is what you are doing?

A. Yes.

Q. Even though before there was any strike your projected revenue was behind \$240,000?

A. Oh, we have admitted that we were behind schedule, there is no question about it.

Q. There was that much loss and you continued to stay behind schedule?

A. Well, but it didn't necessarily mean that we were behind through the entire job.

Q. Well, wasn't this projection of yours wrong in other respects; for instance, turning here to Item 16, as an example, where you have charged or

(Testimony of Ramon E. Reed.)

claimed certain efficiency loss for labor and supplies, you have that [1196] Item 16 which I think is set up?      A. I have it here.

Q. Exhibit 33. Well, now, have you got it there?

A. Yes, I have it.

Q. Oh, in the 100-H area, do you know how much, what your engineers' estimate of the amount of concrete that would have to be poured was, what your original engineers' estimate was?

A. I don't recall exactly, I know we placed or bought more concrete.

Q. Than your estimate?      A. Yes.

Q. Would you agree with me if I told you that your estimate in the H area was 3,092 cubic yards?

A. It could be, if you have it, I don't know.

Q. And these figures that you have in 33 show that, instead of——

Mr. DeGarmo (Interposing): I was just trying to get a document to check your figures, that is all.

Mr. Etter: I think that is right.

Mr. DeGarmo: What was the figure that you gave?

Mr. Etter: 3,092, engineers' estimate on the 100-H area.

Mr. DeGarmo: H?

Mr. Etter: Yes. [1197]

Q. (By Mr. Etter): Now, as I gather it, looking here at the H area, actually you poured, and that is on Page 2, Mr. DeGarmo, of your Exhibit 33, your total yardage poured on the 100-H area was 3,429½ yards, correct?



(Testimony of Ramon E. Reed.)

A. That is probably the yardage purchased from GE.

Q. Well, it's set out in your own item here?

A. Yes.

Q. Now, assuming that the estimate was 3092, counsel is going to check that, I think it's correct, there was an excess of concrete poured over the engineers' estimate in bidding this job at 337½ cubic yards, isn't that correct? A. That is correct.

Q. And now going to the 100-F area, it's our information that the engineers' estimate on the 100-F area was 3,450 cubic yards. The Exhibit here, 33, on Page 2 shows that the total yardage poured ultimately was 4,168, or an excess over the engineers' estimate of 718 yards and, therefore, a total over the engineers' estimate of yardage poured over yardage estimated, of 1,055½ cubic yards of concrete; so that estimate was considerably short, wasn't it, that engineers' estimate?

A. Yes, I am not familiar with that engineers' estimate but those were the yardages.

Q. Now, isn't it a fact that when this computation was [1198] made here for excess labor costs there was no consideration given to the excess costs which were incurred by reason of the excess poured which was due to an under estimate of the Morrison-Knudsen bid of over a thousand cubic yards of concrete?

A. I don't follow you on that, sir.

Q. Well, in determining these amounts that you have claimed as efficiency loss for labor and sup-

(Testimony of Ramon E. Reed.)

plies, assuming if you will, Mr. Reed, that there was an excess pour of 1,055½ yards over the estimate, in other words, if the estimate was 6,542, the engineers' estimate, and the excess over that was 1,055½ yards, that would be additional expense, wouldn't it, arising from an excess over and above the original bid? Wasn't that an excess pour that you didn't expect to have when you bid it, when you estimated that many yards of concrete, originally?

A. Many of those yards were put in there in placing of forming and other expense, I wouldn't say that that was excess.

Q. Well, it was over the estimate, let's put it that way?

A. Not necessarily, because we could have done other work that would have cost more and used less concrete, so there is some balance there somewhere.

Q. Well, the figures indicate, however, that you poured [1199] 1,055 yards more than you estimated for this job; how do you explain that?

A. That could be. But then there is other places we probably didn't spend money for work.

Q. I am just talking about this pouring item, though, because you are asking for specific damages as to cost. Now, isn't it true that if the figures show that there was 1,055 yards more of concrete poured in H and F areas than originally estimated, that that was over and above that estimate for those two areas of concrete?

A. Just that concrete item.

Q. We are talking about the concrete item.

(Testimony of Ramon E. Reed.)

The Court: We will take a recess for ten minutes.

(Whereupon, a recess was taken for a period of ten minutes.)

The Court: All right, proceed.

Mr. Etter: Counsel has advised me, your Honor, that the figures that I used for the engineers' estimate on the concrete pouring were correct as to each locality and in the 100-H area that would be 3,092, and in the 100-F area it would be 3,450, isn't that correct?

Mr. DeGarmo: That is correct.

Mr. Etter: The 100-H area, 3,092, the 100-F area, 3,450.

The Court: All right. [1200]

Mr. Etter: And those were the engineers' estimate of pour. Then, of course, the Item 16, as indicated on Exhibit 33, Page 2, indicates that the total yardage in excess of those estimates was 1,055½ yards.

Q. Do you know, Mr. Reed, whether in making this computation that appears as a breakdown on Exhibit 33, do you know whether or not in computing those figures for excess labor costs, whether Morrison-Knudsen included the entire pour of 7,587½ yards, or whether they merely used the figure of the estimate on the contract, that is 6,542?

A. In computing what figure is that?

Q. In computing the excess labor cost that is claimed here under the title of "Efficiency Loss for Labor"?



(Testimony of Ramon E. Reed.)

A. Well, it's by cubic yards, and we used the actual yards.

Q. You used the actual yardage?

A. If we had used the theoretical, we would use the theoretical all the way through, and the cost per yard would be much more than it is here.

Q. But, as a matter of fact, isn't it true that a thousand yards of this excess cost was the result of a mistake in estimating the required amount of pour, to begin with?

A. It doesn't have anything to do with the labor in this [1201] material.

Q. Well, the contract was——

A. (Interposing): Per cubic yard, and that hasn't anything to do with this.

Q. Well, wasn't the contract bid as to cost on an estimate of cost of 6,542 cubic yards of concrete, isn't that the way this contract was bid, that that would be the amount that would have to be poured and, therefore, you estimated the cost of the concrete and the cost of pouring that much in your estimate? A. In the estimate, that is right.

Q. So that if 1,055 yards was poured more than the estimate you wouldn't say that was due to the strike of the engineers and teamsters, would you?

A. No, but that would increase if you used the estimated yardage or theoretical yardage, these figures would be much higher and you would end up with a much higher figure on this unit.

Q. But if you included this 1,055 yards, which was an estimate of yours to begin with in bidding

(Testimony of Ramon E. Reed.)

for this contract, if you used that in computing the loss due to the engineers and the teamsters strike, aren't you, in fact, charging the engineers and teamsters with an excess cost that was the result of your own mistake in bidding it? [1202]

A. No, sir, if you used the theoretical yardage in arriving at these excess cubic yards, your theoretical yardage would be much higher. This is strictly by yards, it is not in the bid, this is strictly by cubic yards, based on the actual yardage poured.

Q. But you used the entire yardage poured?

A. That is correct, and that is to the advantage here, reduces the actual cost by using it.

Q. All right. Now, in both of these areas, as I understand, there was an underground, or a slab below the level of the ground, that is what I should say, poured first, is that correct?

A. That is correct.

Q. And how far down was that, did you say?

A. It was about ten feet below the ground.

Q. Ten feet below ground surface?

A. Ten feet below ground surface.

Q. And were there walls, also, poured extending from ten feet down up to the ground surface?

A. Yes, sir.

Q. And then walls were poured extending up above ground surface, I gather?

A. No, no, there was just the foundation wall that came up about to the ground surface.

Q. Was there any concrete in addition to that

(Testimony of Ramon E. Reed.)

poured so [1203] far as buildings were concerned, on that slab; what was constructed on the slab?

A. A structural steel building.

Q. A structural steel building? Was there any concrete used in finishing that? In other words, was there a concrete pump house?

A. No, it's a structural steel frame cover over the pump area.

Q. A structural steel frame cover over the pump area? And, in other words, if I understand it correctly, there was no concrete then poured above ground level?

A. I don't recall there was.

Q. Either in the 100-F or the 100-H, is that correct?

A. I think that is correct, I don't recall that there was any poured above.

Q. I see. In pouring concrete, ordinarily, can you tell me does the cost of the pour increase as the pour rises?

A. Sometimes, but not in this instance.

Q. Sometimes, but not in this instance, and why?

A. Our forms had to be very true to line and grade in the footings and we had a good bit of winter protection in the first pours.

Q. I see. Now, in your total of supplies and reaching a total of supplies that were used in computing this cost, [1204] as I understand it, you used the complete cost of all the supplies that you used in the F and H areas?

A. That is right.

Q. In other words, you didn't estimate it, as



(Testimony of Ramon E. Reed.)

you say, from theoretical engineers' estimates, you used the entire materials used in estimating costs?

A. That is correct.

Q. Is that correct?

A. Yes, that is what it says, total actual costs.

Q. Now, one more item that I have some question about, and I call your attention to Item 8, which is the equipment rental. I think you said that there was a move-in charge, is that correct?

A. Yes, sir.

Q. For equipment? Now, in the bill of particulars there was an amount set in, or set out, rather, for move-in and move-out charge or, rather, a charge of \$1,540.34, do you know whether or not that was both a move-in and move-out charge which is in the bill of particulars that we were given?

A. It sounds like it might have been both, I don't know.

Q. Beg your pardon?

A. I don't know about that, if it was, why, it has been taken out.

Q. If that is a move-in and move-out charge, it shouldn't [1205] all be included in that item, am I correct in saying that?

A. Yes, there is only the move-in charge in this item now.

Q. So if that was a move-in and move-out, actually only half of it would be chargeable to this contract?

A. Not necessarily, because it is possible that the

(Testimony of Ramon E. Reed.)

machine went a lesser distance than you moved it in, some jobs are lucky.

Q. But, certainly, the move-out charge, whatever it might be, should be deducted if, in fact, it included a move-out charge? A. Yes, sir.

Q. Now, the company sustained a loss, did they not, or do you know, on this contract of about \$322,000?

A. I can't tell you, Mr. Etter, just the exact figure. I haven't had access to it.

Q. Well, do you know this, that even if the company was returned to the position that it would be in without the strike, in other words, recovered these items claimed as damages, there would have still been a loss on this contract, isn't that right?

A. If that amount is what is the loss now.

Q. If that amount is correct, there would have still been a loss on this contract, isn't that correct?

A. Yes. [1206]

Q. As I understand it, in the claim for the amount of damages the company claims 10%, do they not, for the loss of profits here?

A. I don't think that has come up.

Q. Ten per cent, as I understand it, whatever the percentage might have been ultimately, regardless of this strike, the company would have sustained a loss, there wouldn't have been any profit of any kind or of any per cent, isn't that true?

Mr. DeGarmo: I think that is rather argumentative, it answers it itself.

(Testimony of Ramon E. Reed.)

Mr. Etter: I think it does answer itself, that is why we are wondering about this 10%.

Mr. DeGarmo: I will argue that legally, but I don't think the witness can.

The Court: I will sustain the objection to the question in that form.

Mr. Etter: Well, I think you can examine if you wish to, Mr. Carey. I have gone through most of these items.

### Cross-Examination

By Mr. Carey:

Q. Mr. Reed, as I recall, you said that you went on the job as project manager when the work first started?

A. I wasn't there the day that the rest of the people started, I came in later. [1207]

Q. Well, it seems to be admitted that the contract was dated November 25, 1955, and you went to work three days afterwards, on the 28th of November, '55, does that conform to your recollection?

A. I got there about the middle of December. We hadn't actually done any work.

Q. Then you remained as project manager how long? A. Until the first of April of '57.

Q. Of '57? A. Yes, '57.

Q. Well, you were there then until the completion of the job, were you? A. No, sir.

Q. And when was the job completed?

A. The work in F area was substantially com-



(Testimony of Ramon E. Reed.)

plete when I left. The completion date hadn't been determined.

Q. Well, we had a hearing here last June, specifically from June 10 to June 19, as I recall it. Was the job completed at that time? You testified during that hearing, do you remember?

A. Yes, I think it was finished.

Q. Well, are you sure; do you know?

A. Yes, I am sure it was.

Q. Then you were assigned to another job and went down to South America? [1208]

A. No, I went to California.

Q. And when was that, when were you assigned to the next job? A. The first of April.

Q. How long were you there?

A. Until the first of July.

Q. Of what year? A. Of '57.

Q. Well, then, you went to South America after the hearing in June here?

A. That is correct, yes.

Mr. Carey: Now, your Honor, I will try to avoid repetition, but I won't guarantee it.

The Court: All right.

Mr. Carey: Mr. Clerk, I wonder if you would hand Mr. Reed Exhibits 21 and 22?

The Clerk: You don't have them, do you?

Mr. Carey: 21 and 22, they are these.

Q. Refer first to 21, the copy that I have in some spots is a little bit dim. Down in the lower left-hand corner it says, "Approved for Morrison-Knudsen, title Project Engineer," and there is a

(Testimony of Ramon E. Reed.)

signature there that is not correct, or it is not visible on my copy, who?      A. That is Mr. White.

Q. Mr. White? [1209]      A. Yes.

Q. And over on the other corner, the lower right-hand corner, there is a date, what should that date be, do you know?

A. That is January 20, 1956.

Q. Now, January 20, '56?      A. Yes.

Q. This was an exhibit, then, prepared after the work was in progress?

A. Well, yes, at the time it was started, just started.

Q. Just about the time it was started?

A. That is right.

Q. Had there been any substantial amount of work done at this time?

A. In F area, yes, there had. Excavation was well along, there was a sewer being installed, and the work was getting underway.

Q. Well, the work was started about November 28, of '55?

A. Actual work wasn't started on November 28th.

Q. Well, all I know is what the pleadings say, both complaints say it was, but what is your recollection, then, as to what date it was started, as nearly as you can remember it?

A. Oh, it was around the 18th or 20th of December, actually.

Q. And this date on this exhibit should be what? [1210]

(Testimony of Ramon E. Reed.)

A. The date on the exhibit? The date is all right.

Q. I know, but it don't show on my copy, that is what I am getting at.

A. Oh, I am sorry; 1/20/56.

Q. Well, this Exhibit 21 was made substantially 30 days after the work was started, 30 days more or less?

A. More or less.

Q. Yes, so that very largely it was not a record of actual performance but was a prediction of what somebody expected?

A. That is correct, yes, that is what we have pleaded.

Q. Well, in the contracting business predictions always do not prove true, do they?

A. Oh, no, not always, but we have a pretty good experience record for following schedules.

Q. Did you personally prepare this data appearing on 21?

A. No, I personally did not.

Q. You were just taking someone else's word for that?

A. Not necessarily, no, I was in with Mr. White on it, we both worked on it.

Q. Well, if there are any errors in it, who is responsible for the error, you or Mr. White?

A. Well, I suppose White, Arndt and myself, we all had a hand in it. They are pretty thoroughly checked by the AEC and if they don't like it, why, they turn it back [1211] to you and you make it out again.

Q. Well, it was what you expected would occur over the construction period?

A. Yes, sir.



(Testimony of Ramon E. Reed.)

Q. Now, is the same true of Plaintiff's Exhibit 22?

A. Yes, they were both made out the same.

Q. That is the same date on that one, 20?

A. Yes, 1/20/56.

Q. 1/20/56? At the time these two exhibits were made out some excavation had been made?

A. That is correct.

Q. Had the excavation been completed at that time?

A. No, sir, it hadn't been completed in either area, I don't believe. In H area I just don't recollect if it had been started yet.

Q. So that so far as that area was concerned, this is a prediction? A. That is right.

Q. Now, take the second item on Exhibit 21, "Architectural Revisions," what does that mean?

A. These buildings connected onto existing buildings, and those are walls that come out and work that was done to connect the two areas.

Q. None of that work was done at the time of preparation of this exhibit? [1212]

A. Oh, no.

Q. There appears to be 17 items on this Exhibit 21. Is it not a fact that as of the time this exhibit was prepared, the only work that was done of any substantial amount was excavation?

A. January 20 excavation, they placed some concrete.

Q. A very small amount, however?

A. Yes.

(Testimony of Ramon E. Reed.)

Q. So, generally speaking, with the exception of excavation and a very small amount of concrete, this exhibit is entirely a prediction of a hope?

A. Well, that is correct.

Q. And the same applies to 22?

A. That is right.

Q. Now, have you 24 before you? A. Yes.

Q. Plaintiff's 24? A. Yes.

Q. When was this made?

A. This was made October 11, '56. The date is on it, Mr. Carey, over by the title.

Q. Correct. Did you make this Exhibit 24?

A. I believe I helped make it.

Q. To what extent is this your work and to what extent is it the work of someone else? [1213]

A. Well, this work, it all ties back into these other exhibits. The scheduled revenue is tied back into Exhibits 22 and 21, and the actual revenue is taken off of the monthly estimate.

Q. Well, the figures that are on here representing revenue, you took someone else's word for that, didn't you, in plotting this exhibit?

A. Which figures?

Q. Well, any of these figures.

A. Well, they were all taken right off of these charts. This was all compiled from these charts.

Q. I see. Well, to the extent that Exhibits 21 and 22 are some work of someone else, the same is true of 24?

A. Well, I was in it, I don't have my name signed here, but I mean I was in the over-all pic-

(Testimony of Ramon E. Reed.)

ture, I don't know necessarily whether I did it myself.

Q. Well, referring to 24, in answer to Mr. Etter you said that at the time the strike occurred you were already 18 days behind schedule?

A. That is right, we admit that.

Q. Yes. Then this graph shows a straight horizontal line and that represents the strike period?

A. That is right, no revenue.

Q. No revenue. Then from there on upwards, your line representing actual revenue is practically parallel to [1214] the line representing anticipated revenue, isn't it?

A. Well, it isn't exactly parallel.

Q. Well, the variation is very slight

A. Well, it isn't parallel.

Q. Well, about this claimed loss of revenue, do you claim that when you start a job that you get the same amount of revenue each succeeding day as the work progresses?

A. No, sir. That is, this chart right here shows you that you don't.

Q. So, all of these three charts are just predictions, aren't they, or are they expectations?

A. That is right, this is a construction schedule, it's a part of this one over here (indicating).

Q. And just to the extent that there are hazards in the construction business, just to that extent these predictions may fail of fulfillment?

A. Well, they may, but we certainly go out of our way to see that they don't.



(Testimony of Ramon E. Reed.)

Q. Yes, but you sometimes do experience that?

A. Those things over which we have no control since this strike.

Q. And sometimes and frequently when you figure a job and you don't have any strikes, you can have a loss?

A. Oh, that is correct. [1215]

\* \* \*

Mr. Carey: Let's see "Rental of Equipment." Yes, I am in error about that, as I frequently am. This refers to Exhibit 8.

Mr. Etter: Item 8.

Mr. Carey: Or Item 8, yes.

Q. You say you had made this up shortly after the strike ended?

A. Well, it was in that, yes, right in that period. I don't know just the exact date.

Q. And that is computed entirely upon these rental rates shown in these two schedules, one by the AGC and the other one by the AED, is that it? [1219]

A. Yes, I don't think it's this particular one that is in here.

Q. No, but one of those. A. AED.

Q. It is not made up on the basis of the charges Morrison-Knudsen made to this job?

A. No, sir, it's made up on charges that would have been made to us if we had gone out and had to get equipment.

Q. Yes, but you didn't do that, did you?

(Testimony of Ramon E. Reed.)

A. No, we were more fortunate.

Q. In the original bill of particulars you claim \$29,592 for that item. You are now claiming \$27,043 for the item, and isn't it a fact, if you know, that the actual amount that Morrison-Knudsen charged for the job for this Item 8 was only about \$9,100?

A. I don't know the actual figures.

Q. When you were making up this Exhibit 29, did you make any inquiry as to what the actual charge made to the job was?

A. We were not interested in the actual charge.

Q. You didn't care about that? A. No.

Q. And don't care now?

A. No, it's irrelevant, as far as I am concerned, this is what it would have cost my job if I had had to go out [1220] and get this equipment.

Q. Yes. All right, now, we are coming to that this minute. Morrison-Knudsen, on account of the size of their operations in most instances have their own equipment, haven't they?

A. Well, it depends on the type of contract.

Q. Yes, but generally speaking, though, they have their own equipment, are able to furnish their own job with their own equipment, and over a period of years they have their own schedule of charging, haven't they, and that is not what you used here? A. No, sir.

Q. Now, these rates then are rates used or suggested by these manuals of the AGC and the AED as suggested rates for particular pieces of equipment? A. That is right.

(Testimony of Ramon E. Reed.)

Q. They are binding on nobody, are they?

A. They are an average rate, compiled over rental rates.

Q. Oh, if a contractor other than Morrison-Knudsen who hasn't a large supply of his own equipment, has occasion to rent a crane from another contractor who has a crane but is not using it, this is a suggested rental rate made by the AGC?

A. The AED, yes, sir.

Q. But, to such contractors dealing for the rental of this [1221] equipment, they are not bound by this dealing, are they?           A. No.

Q. As a matter of fact, it's a matter of dicker-ing between them, isn't it, and the actual rental that contractor A might pay to contractor B, might be substantially less than this?

A. Well, I haven't been where you could dicker much on equipment, Mr. Carey.

Q. Pardon, I didn't get the answer.

A. I say, I haven't been where you could dicker very much on equipment, the rate has been pretty well established and you don't get much change.

Q. Well, to what extent have you had occasion to hire equipment yourself?

A. Not with Morrison-Knudsen here, but in the East I have been on jobs where you rented equipment.

Q. Well, this job was out West, wasn't it?

A. Oh, yes, that is what I say, but it isn't the established practice to rent equipment to somebody for one price, and to somebody else for another.



(Testimony of Ramon E. Reed.)

Q. Well, so far as your own personal experience is concerned, these rates that are shown on Plaintiff's Exhibit 29 are not rates with which you, personally, have had any experience, you haven't rented any equipment at these rates, have [1222] you?

A. Not on this job, no.

Q. Or any job in the State of Washington?

A. No, sir.

Q. No, any job anywhere in the West?

A. Well, that is irrelevant. I mean, this is the only job I have been on in the West.

Q. What is irrelevant?

A. Whether I have rented any equipment anywhere in the West.

Q. Well, you may think so, I don't. At any rate, you have no knowledge, as I understand it, of the actual amount that Morrison-Knudsen charged this job for these various items?

A. No, I couldn't tell you the exact amount, no, sir.

Q. Now, coming to Item 16, "Efficiency Loss for Labor and Supplies," that is Exhibit 33, have you got that in there? A. Yes, I have it.

Q. Now, when you are pouring a building and there is concrete in it, the cost of pouring each yard of concrete isn't the same, is it?

A. No, sir.

Q. In this instance, in both of these buildings you first poured a big slab?

A. No, sir. [1223]

(Testimony of Ramon E. Reed.)

Q. I thought you said you did.

A. No, sir, the slab was divided up into a number of small pours, it wasn't one big slab.

Q. Well, it's one big floor, isn't it?

A. Eventually, after the pours are all made, yes.

Q. Yes, and if you are pouring a large quantity of concrete, of course the cost per yard is likely to be less than if you are pouring small quantities?

A. That is correct; well, it depends on the forms that go into that concrete.

Q. Well, ordinarily you would have less forms in the slabs than you would have in the side walls, wouldn't you?

A. Ordinarily, yes.

Q. Yes; so, you would expect the side walls to cost more per yard than the slab?

A. Depending on the time of year you put it in.

Q. Anyway, the figures appearing on this Exhibit 33 are not figures that actually appear on the books of Morrison-Knudsen, but they are those figures supplemented by your calculations?

A. Now, which figures are you referring to?

Q. All of them.

A. No, sir, there are figures there that appear on our books.

Q. Which ones? [1224]

A. Labor cost to March 31, and labor cost to September 30.

Q. Well, those costs would have varied to some extent even had there been no strike, wouldn't they?

A. Well, sure, they would have varied, that labor cost of September 30 would have been much less.

(Testimony of Ramon E. Reed.)

Q. Yes, so there is, depending on when the work is done, there is always likely to be a variation in the unit cost?

A. Well, where he had to start up twice, like he did here, you get a much higher labor cost.

Q. Can you tell me why, in the original bill of particulars which was filed here on January 17, 1957, \$55,280 was claimed for that item, and in the amended bill of particulars \$92,835 was claimed for that item, that amended bill being filed on November 5, '57, and now that figure, in turn, is revised; why all these revisions?

A. I would have to have the background.

Q. You can't explain that?

A. I don't know.

Q. Well, it's pretty near adjournment time now. Do you think you could get that background by convening time in the morning?

Mr. DeGarmo: I might suggest, Mr. Carey, that this witness has been in South America since 1957; he just [1225] came back.

Mr. Carey: Well, you are relying on him to sustain a claim of a quarter of a million dollars. I think we are entitled to find out something about it.

Mr. DeGarmo: I have no objection, I just suggest that it would be difficult.

Q. (By Mr. Carey): Well, my question is: Do you know why this particular item was first calculated at \$55,000 plus, then increased to \$92,000 plus, and has now been recalculated at \$89,000 plus?



(Testimony of Ramon E. Reed.)

A. Well, it would appear that there were some things left out in the first calculations.

Q. Do you know who left it out?

A. Mr. Carey, I can't answer that.

Q. Do you know what was left out?

A. No, sir.

Q. Or why it was left out?

A. No, sir, I can't tell you without going back into the history of this thing.

Q. All right.

The Court: Did you participate in preparation of the amendments, Mr. Reed?

A. No, sir.

The Court: Mr. DeGarmo did that with some others, I suppose, is that correct? [1226]

A. Yes.

The Court: All right.

Q. (By Mr. Carey): Well, you can't give us any further information on that subject, then?

A. No, not the differences; no, I don't know.

Q. Oh, let me ask you this: This original contract, as I recall, with the Atomic Energy Commission, was for \$1,800,000?

A. As I recall, that is it, yes.

The Court: Let's see, that is the two of them?

Mr. Carey: Yes, in the aggregate.

The Court: Yes, the two.

Mr. Carey: The F area, as shown by Exhibit

1—

Mr. DeGarmo (Interposing): 21, I think.

(Testimony of Ramon E. Reed.)

Q. (By Mr. Carey): Or 21, yes, your estimated cost was \$908,000 plus? A. That is right.

Q. And your estimated cost of area H, as shown on Exhibit 22, what is that, 863——

A. Eight hundred sixty-eight.

Q. Eight hundred? Now, is there any extra work done on this job in addition to the work required by the original specifications?

A. Yes, sir. [1227]

Q. How much?

A. I don't know the total amount.

Q. When was that ordered?

A. That was done during the installation of equipment.

Q. Well, none of these exhibits reflect that?

A. Yes.

The Court: Did he give the extent of the extra work?

Mr. DeGarmo: He said he could not give the amount.

Mr. Carey: He said he could not, that is what I was asking him about.

Q. You don't know anything about that, then, Mr. Reed? A. Not the exact figures.

Q. Well, figures that are not exact are not of much use.

The Court: Well, this contract covers two structures within the area down there, or additions to the structures?

A. Yes.

(Testimony of Ramon E. Reed.)

The Court: Those buildings are nearly all concrete, aren't they, basically concrete?

A. Well, the foundation was concrete, with the structural frame building covered with transite siding.

The Court: What?

A. Corrugated transite siding.

The Court: Were they pumping plants? [1228]

A. Yes, they were, to increase their pumping, the quantity of water, for the reactors.

The Court: They pumped an immense amount of water out of the Columbia River, then?

A. Yes, this was to increase that pumping.

The Court: Well, Mr. Carey, I think we might as well quit for today. I think if we do this well every day, we should get through this week. Court will adjourn until tomorrow morning at ten o'clock.

(Whereupon, court was adjourned until ten o'clock a.m. on February 25, 1958.) [1229]

Tuesday, February 25, 1958—10:00 o'Clock A.M.

(The trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit:)



## RAMON E. REED

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Cross-Examination  
(Continued)

Mr. Carey: It will take me about ten minutes.

The Court: All right.

Q. (By Mr. Carey): Mr. Reed, yesterday afternoon I was asking you about your Exhibits 21 and 22, you recognize what I am talking about?

A. Yes.

Q. Now, the original contract price for the two areas was \$1,850,000, in round numbers, wasn't it, do you remember that? A. Yes.

Q. And that covered both of the areas stipulated in the original contract, that figure? [1230]

A. Yes.

Q. Now, as shown by your Exhibit 21, your estimated cost on area F was \$908,380, that is correct, isn't it? A. Yes.

Q. And your estimated cost on area H was \$868,800? A. That is right.

Q. Yes, or a total, as I make it, of \$1,777,180, do you care to check that?

A. That is about what it is.

Q. So the difference between your estimated cost and your contract price of \$1,850,000 would be your profit, if everything went according to plan?

A. No, sir.

Q. Why not?

(Testimony of Ramon E. Reed.)

A. Because there is two other items that aren't included in these.

Q. What are those two other items (paper handed to the witness by counsel De Garmo)?

A. Well, there were some small office additions and modifications.

Q. Well, you are referring to extras?

A. No, these are just the first two items of our contract. There is three other lump sum items in our contract.

Q. Well, do I understand the contract price was something in excess of \$1,850,000?

A. No, sir, \$1,869,580 is the total contract price.

Q. Well, then, what is it you are going to increase, the figures shown on Exhibits 21 and 22?

A. No, sir, these are the only two areas that is involved. There is three other items in the contract, there are three other contracts.

Q. Well, what I am trying to get at is, are those three other items included in the contract price of \$1,800,000?

A. Yes, sir.

Q. Well, then, if you perform the entire contract, that is the amount you would get paid by the government, isn't it?

A. That is correct.

Q. Yes. Well, what is your estimated cost of performing the work for which you were going to get \$1,850,000?

The Court: Pardon me, I may be getting a little confused here but I thought this Exhibit 21 covered the estimated cost of 100-F area construction, and 22 covered 100-H estimated cost. Now, what is this

(Testimony of Ramon E. Reed.)

about other things not included here; aren't these documents complete?

Mr. DeGarmo: I think if your Honor will examine an exhibit already in evidence, it will become immediately apparent. This is Plaintiff's Exhibit 1, as to where the difference is.

Mr. Carey: I had the same understanding as your [1232] Honor.

Mr. DeGarmo: The exhibit explains it very quickly (paper handed to the Court).

The Court: The twenty thousand fifty-one, were those extras that were not in the original contract?

Mr. DeGarmo: That is the original contract.

The Court: Oh, I see.

Mr. DeGarmo: There are five different items in the contract.

The Court: There are three items here that are not in these two exhibits? Go ahead, Mr. Carey.

Mr. Carey: Well, I had the same misunderstanding, if it was a misunderstanding, as your Honor.

Q. Then, the total cost of the original contract was the amount shown on Exhibits 21 and 22, plus that amount, is that correct?

A. Those three other items.

Q. And the total of those three other items is what?

The Court: Do you want to see it? Let's see, that is in evidence here.

Mr. DeGarmo: Yes, that is Plaintiff's 1.

The Court: Have I got that here?

Mr. DeGarmo: No, you don't have it.



(Testimony of Ramon E. Reed.)

The Clerk: No, you don't have it. That came in in the first hearing, your Honor. [1233]

The Court: Oh, I see.

A. The total amount of the contract is \$1,869,580.

Q. (By Mr. Carey): All right. Now, I am trying to get the total that you have there. You say the total cost was what is shown on Plaintiff's 21, 22, plus this amount of twenty thousand odd, is that right?

A. No, plus the amount of ninety-two thousand plus.

Q. Ninety-two thousand? A. Yes.

Q. Well, is that an estimated cost not included in Plaintiff's Exhibits 21 and 22?

A. Yes, there are three items that aren't included in it, these three items are just the first two in the contract.

Q. Well, what I am trying to find out, Mr. Reed, is the amount of the items that you say should be included in your total cost in addition to the amount shown on Exhibits 21 and 22. I understood you to say it was \$20,000, more or less.

A. No, there is three items; there are two items of \$20,400, and one item of \$51,600.

Q. Well, give us the total, then, of all the items, that is all I am after.

The Clerk: Would you like a paper, sir?

The Court: What you are asking for is the total of [1234] the items not in 21 and 22?

Mr. Carey: Yes, that is what I am driving at.

The Court: I see.

(Testimony of Ramon E. Reed.)

A. \$92,400.

Q. (By Mr. Carey): \$92,200?

A. Four hundred.

Q. Four hundred? Well, your total cost, then, if my arithmetic is correct, is \$1,869,580?

A. That is correct, that is the total contract amount.

Q. Well, that is a little bit in excess of your contract price, isn't it?

A. No, that is the contract price.

Q. Well, is this sum of \$92,400, is that your estimated cost or is that what you are going to be paid for it by the government?

A. That is the contract cost, that is the contract price, what we were paid for doing the work.

Q. Well, can you tell us what the cost of doing that work was? A. No, I cannot.

Q. You don't know? Well, then, if your contract price was \$1,869,000, \$1,869,580, what do you estimate or did you estimate was the total cost to you of doing that work for which you were going to be paid that amount of money? [1235]

A. Oh, I don't know that.

Q. You don't know? A. No.

Q. Well, the difference, whatever it would be, would represent the profit or loss in the case, as the case might be? A. Well, that is right, yes.

Q. But you don't know what that is?

A. No, I don't know what that is.

Q. That is, if the work had gone along just as you had estimated at the time you made Exhibits

(Testimony of Ramon E. Reed.)

21 and 22, you are unable at the moment to tell the Court whether you would have made a profit or loss on the job?

A. Why, I am sure there was a profit, some amount figured.

Q. Well, can you tell us how much?

A. No, I can't tell you how much.

Q. Who can?

A. I don't know, I imagine somebody.

Q. Is there anybody that you know of that can?

A. I don't know.

Mr. DeGarmo: I think we have two people.

Mr. Carey: Well, now, just a moment.

The Court: The witness can always answer he doesn't know. He is not supposed to know everything.

Q. (By Mr. Carey): Well, so far as you know, then, so far [1236] as your own personal knowledge goes, there is no basis in your information for making any calculation upon the basis of 10% profit on this job, is there?

A. I don't quite understand what you mean.

Mr. Carey: Well, all right, that is all.

Mr. Etter: I have just a few more questions on a few matters yesterday.

The Court: Go ahead and finish you cross-examination and then we will have redirect.



(Testimony of Ramon E. Reed.)

Cross-Examination

(Continued)

By Mr. Etter:

Q. On Item 2, may I inquire about that. I am going to ask just about a couple of items on that front page; you may or may not have the information. If you don't, why, one of your other witnesses probably will have. Directing your attention first to the 100-H area, which is the first one, Mr. Reed?

A. Yes.

Q. I note that you have a cost figured out, or at least it has been figured out, shall we say, "Labor Cost to March 31," which would be a labor cost preceding the strike, as I gather it, of \$20.91 per cubic yard, do you follow me on that figure?

A. Yes, sir. [1237]

Q. That is a labor cost in pouring the number of yards indicated during the work that was being carried on up until March 31, 1956?

A. That is right; that is correct.

Q. Are you able to tell me what your cost estimate was prior to the commencement of this job, per cubic yard, for labor costs in pouring concrete?

A. No, sir, I do not have that.

Q. You do not have that? A. No.

Q. Now, looking at the 100-F area, which is the area preceding, the labor cost to March 31, 1956, in the 100-F area is indicated as being \$28.41 per cubic yard?

A. Yes.

Q. In line with the other question I would as-

(Testimony of Ramon E. Reed.)

sume you do not know what the estimated cost price per pour was?           A. No.

Q. Now, just turning that page over, if you will, or turn the first page over, there is a total yardage poured, I see, of material, and an estimated cost, and in this item you have the estimated cost per cubic yard of \$6.10 per yard in the F area?           A. Yes.

Q. Now, that estimated cost, I assume, was the estimated cost in the contract bid, am I correct?

A. Yes, that was in our bid documents.

Q. That was in your bid documents?

A. Yes.

Q. And that was prior to March 31, was it?

A. Yes, sir.

Q. And, likewise, in the 100-H area the estimated cost per yard is \$6.49, do you notice that?

A. That is right.

Q. Now, going back to the 100-F area, and going back to the estimated cost per cubic yard, can you tell me what was the actual cost per cubic yard of the cement itself, and I gather this is material, this refers to material rather than labor cost; can you tell me what the actual material cost was prior to the strike per cubic yard of concrete?

A. No, sir, I can't tell you that.

Q. And that would be with respect to both 100-F and 100-H areas?           A. I don't know.

Q. Now, just one other question, I just touched on this the other day. I would like to call your attention to 29, and over on the second page I want to call your attention down to where there are the words

(Testimony of Ramon E. Reed.)

“Total” appearing four times, down at the bottom of the second page of 29, and I note that listed there is “Total [1239] Move-in Cost, Lorraine MC-414, \$770.17,” do you notice that?           A. Yes.

The Court: What number of exhibit?

Mr. Etter: 29, your Honor.

The Court: All right, I have it here.

Q. (By Mr. Etter): And I am talking about the second to the last item to your left, “Move-in Cost, Lorraine MC-414, \$770.17,” then you will notice there is charged immediately under that, “Move-out Cost, 414, estimated \$701.17,” do you notice that?           A. Yes.

Q. Now, your testimony yesterday, as I gather it, was that the job itself was charged with the move-in cost, but on the move-out another job would be charged with that, is that correct?

A. Yes, that is the way it operates.

Q. Then, this one amount of \$770.17, because, first, it's estimated and because, as I understand your testimony, you are charged only on the job with the move-in cost, is actually an unjustified item or addition, is it not?

A. No, sir, not in this instance.

Q. Why not?

A. This is a cost directly attributable to the strike. This machine would have been down close to the area [1240] where this other contract was, in fact, it went back to the contract from which it came.

Q. It went back to the contract from which it came, but it was not charged to that transaction or



(Testimony of Ramon E. Reed.)

contract?      A. I don't understand.

Q. Well, you said yesterday that this job would be charged with the move-in cost of equipment, and you have charged it. Now, it is also charged with the move-out cost?      A. That is right.

Q. It went to another job?

A. This is an additional cost, additional company cost, incurred because of the strike.

Q. Why, because of the strike?

A. Because this equipment was moved from Oregon up to Richland and moved directly right back to Oregon.

Q. Well, it was used back in Oregon, was it not?

A. That is right.

Q. It was used on the job; was it charged, can you tell me whether the move-in cost when it went back to Oregon was charged to the Oregon job?

A. Well, I imagine it was, but still that is still a cost incurred due to the strike on the company, maybe not to this job, but it was a company cost.

The Court: What is this machine, equipment it is, [1241] isn't it?

Mr. Etter: Yes, heavy equipment.

The Court: It's a motor crane, motor crane used for excavation?

A. Yes.

The Court: Did it do its work fully in Richland before it was moved back?

A. It never was used, never turned a wheel in Richland.

The Court: It was up there and then because of

(Testimony of Ramon E. Reed.)

the delay in the strike it was sent back without being used?

A. It was on the way to the job when the strike started, and then we kept it on the job, never knowing from day to day when the strike would be over, and then after two months it was moved back to Oregon to the job from which it came.

The Court: Without doing anything at Richland?

A. Never turned a wheel at Richland.

The Court: All right, go ahead.

Q. (By Mr. Etter): But you say you assumed that the move-in charge was assessed against the Oregon job? A. The move back charge.

Q. The move back charge?

A. Well, but it is still a company cost.

Q. It is still a company cost, but it was charged against the Oregon job? [1242]

\* \* \*

### Redirect Examination

By Mr. DeGarmo: [1243]

\* \* \*

Q. Now, Mr. Reed, referring to the exhibit, the graph exhibit, which I think is No. 23 or 24.

The Clerk: 24.

Q. (By Mr. DeGarmo): You have already testified that as of March 22 this graph indicates that the progress of the work, the actual progress of the work, was 18 days behind the anticipated or charted

(Testimony of Ramon E. Reed.)

progress, the scheduled progress as of that date (shows paper to witness). Will you tell us what were the reasons why the actual progress was behind the contemplated progress as of that date?

A. Well, we had exceptionally cold weather in February, which delayed our work.

Q. How did that delay the work, mere cold weather?

A. Placing the concrete in cold weather is difficult, and then we had a sewer line that went around building F, right around close to the sides of it, and the concrete of the joints had to be delayed in instances due to the cold weather.

The Court: When did you start to work?

A. This F was started, oh, soon after the 15th of January, [1245] the excavation.

The Court: But how soon did you start pouring concrete?

A. We were pouring concrete in January.

The Court: You started that simultaneously with the excavation? You did the excavation first, didn't you?

A. Yes; the bulk excavation, but we were working in this area during February, in order to maintain our schedule, when all the other work in the area was practically shut down. The other contractors were, they just shut down and went home, where we were trying to maintain a schedule and get it done during this cold weather, and the work that should have gone along expeditiously.

The Court: When you make out a schedule don't



(Testimony of Ramon E. Reed.)

you make out any allowance for possible weather delays in wintertime?

A. No, sir; not down here; not like the weather we had there in February. You do in some places where you expect real cold weather.

Q. (By Mr. DeGarmo): Was this weather in February of '56 a normal February, or was it something unusual?

A. No; it was unusual; it was unusual weather. Mr. Etter: So was '55.

Mr. Carey: Was the Union responsible for that weather condition? [1246]

The Court: I think this is an explanation of why he got 18 days behind.

Mr. DeGarmo: That is right. We are not claiming anything on account of that.

Q. You mentioned this sewer, what was there about that that delayed the work, and was that part of your work or was that something that was not contemplated in your work?

A. Both. On excavation we tied in the existing sewers in four spots, or three places, and where we tied in to the existing sewer lines, we ran into reinforcing steel and more difficult excavation of existing concrete than shown in the plans, and also we ran into more contamination, the contaminated area in these three spots, than was expected.

Q. What did contamination have to do with delay?

A. Well, where you are in a radiation area, your men are reasonably allowed to be in this area for a

(Testimony of Ramon E. Reed.)

certain number of minutes or hours, depending upon the intensity of the radiation.

Q. All right. Now, you have mentioned the weather and this sewer problem; was there any other problem that came about before March 22?

A. Yes; there was a sheet metal strike. I believe that the sheet metal workers put up a picket line that only the [1247] Teamsters observed, and we couldn't get the concrete for a couple of days, I believe it was, two, or something like that.

Q. Do you recall when, approximately, in the year that occurred?

A. That was in February of '56.

Q. That was in February of '56?

A. Yes; I believe it was in February.

Q. Was that strike something you anticipated when you set up your original schedule?

A. No, sir.

Q. All right. Now, did those three delays combined, that, is your weather and your sheet metal workers strike, and your sewer problem, account for this delay that you have mentioned, the 18 days behind progress, was there any other conditions that you know of that caused that?

A. No; I think that that would cover it, the strike and the weather and the radiation and the trouble we had in getting this sewer around the area.

Q. Now, Mr. Reed, calling your attention now to Plaintiff's Exhibit 21, first, which covers the 100-F area, will you tell us from that schedule, as-

(Testimony of Ramon E. Reed.)

suming that the 18 days had been added, the 18 days which you were behind schedule as of March 22, that that had been added to the construction progress which was anticipated on that [1248] chart, when would you have completed the pouring of concrete in the 100-F area?

A. Well, it would have been about May 18, I guess.

Q. Well, when does the construction chart show the pouring of concrete to have been completed as originally contemplated? A. May 1st.

Q. May 1st? And you would add the 18 days to that? A. Yes, sir.

Q. All right. Will you now refer to Plaintiff's Exhibit 22, with respect to the 100-H area and assume again that the 18 days of behind progress as of March 22 is added to the originally scheduled time for pouring of concrete, and tell us when you would have completed the pouring of concrete?

A. That would have been on June 18. You would have hoped to have made up those 18 days.

Q. But even assuming that you didn't make them up, you would still have been completed by when? A. June 18.

Q. Now, as a matter of fact, when did you pour the concrete in this area or complete the pouring, approximately?

A. Oh, it was in September some time, that is the bulk of it, but then you had a little bit all through the job.

Q. Well, I am speaking of the bulk. [1249]



(Testimony of Ramon E. Reed.)

A. The bulk of it.

Q. Not the small clean-up jobs.

A. In September. [1250]

Q. What, if any, effect upon your progress during the pouring of this concrete during the summer months of 1956 did it have other than cost?

A. Well, we sustained delays on the placing of concrete in hot weather.

Q. What is the difficulty which you encounter when you attempt to place concrete in the summer months?

A. Well, oftentimes the concrete when we got it, it wasn't plastic enough, they wouldn't put enough water, there wouldn't be enough water in it; there would be delays in getting it out of the mixer and then you had to cure much more, spend more money in curing it, keeping it wetted down.

The Court: Do you have to keep the surface damp?

A. Yes.

Q. (By Mr. DeGarmo): By the way, while we are on the subject of concrete, from what source did you obtain the concrete that was used on this job?

A. We bought it from the General Electric Company and they had a subcontract with Frank, oh, I can't think of his name; it was a small contractor there in Richland.

Q. Well, where, physically, was it hauled from to the job site?

A. Oh, it was approximately ten miles from the site, back in the back part of the area. [1251]

(Testimony of Ramon E. Reed.)

Q. And in what type of conveyance was it hauled from the mix plant to where it was actually poured?

A. In Transimix trucks.

Q. I will come back to that again in a moment, but I want to pursue again this question of the delays. Other than any delay that was occasioned by the pouring of concrete in the summer months after March 22, let's say, after the work resumed after the strike, what, if any, delays of any unusual character did you encounter up until October?

A. We didn't encounter any.

Q. You had no problems after you once got back to work as far as weather or these other things, like you had before?

A. No, sir.

Q. Do you recall, Mr. Reed, when it was that you actually were able to start work again after the strike period, bearing in mind that date?

A. June 17 was when we started.

Q. June 17?

A. That was after the Carpenters labor dispute.

Mr. DeGarmo: May I have Plaintiff's 23?

Q. Yesterday during cross-examination by Mr. Etter, some questions were asked relative to Plaintiff's Exhibits 21 and 22, and also I think they related to Exhibit 24, [1252] the three construction status charts, indicating an average revenue, average daily revenue. I wish to ask you if any of these charts are prepared on the basis of an average daily revenue?

A. No; that is imposible because your revenue

(Testimony of Ramon E. Reed.)

items are scheduled at different times so that it's impossible to have an average there.

Q. Well, now, will you state whether Exhibit 23 shows both scheduled and actual received income or revenue from this project during the period of these charts?

A. Yes; up to the first of October.

Q. Well, now, I note in the first month of December, 1955, there is scheduled revenue of \$18,167, and then the next month, in January, it jumps to \$90,442. What is the reason that it is 18 in one month and then 90 the next?

A. Well, it's \$18,000 in one month because you are just getting started and that just covers excavation items and then in January your excavation is well along and you are starting your concrete and reinforcing steel, so other pay items are coming into the picture.

Q. So that the amount of income which you receive is not uniform each month, then?

A. No, sir.

The Court: Pardon me, is 23 in evidence? [1253]

Mr. DeGarmo: Yes; I have 23. This is the one that I did not have extra copies of, I am sorry. (Q.) I also note in the latter end of the scheduled revenue that whereas it shows \$187,593 scheduled revenue in July, \$157,572 in August, and then it drops to \$52,128 in September, to \$26,064 in October, and a similar amount in November; now, why those changes in scheduled revenue?

A. Well, that is where the bulk of your work



(Testimony of Ramon E. Reed.)

is finished and this is just clean-up work or finishing up various items on which there isn't too much revenue.

Q. Well, then, is it a fair statement that the amount of revenue is dependent upon the amount of work that you are doing in the particular month, that is what produces the revenue? A. Yes.

Q. And if you do more work one month than the next, then your revenue is greater?

A. That is correct. [1254]

\* \* \*

Q. Do you have Exhibit 33 in front of you there? A. Yes; I do.

Q. Yesterday in cross-examination of you by Mr. Etter, it was brought out that, whereas, the bid estimate or job estimate for the 100-H area showed 3,092 cubic yards of concrete that, actually, according to Plaintiff's Exhibit 33 there were poured 3,429½ cubic yards and it was [1263] also brought out in connection with area F that, whereas, the bid estimate showed 3,450 cubic yards that there were actually poured, according to Plaintiff's Exhibit 33, 4,168 cubic yards. Can you tell us, Mr. Reed, what was the reason for this additional yardage which was actually poured upon the job over that which was originally estimated?

A. Well, we didn't get the yield per cubic yard that was estimated.

Q. Now, what do you mean by "yield per cubic yard" so that we can understand it?

(Testimony of Ramon E. Reed.)

A. Well, the mix cubic yards at the batch plant wouldn't fill the cubic yard of form; we didn't get the yield. The mix, that was mixed based on a cubic yard, but when we got it to the area and poured it in the forms it didn't yield a full cubic yard.

Q. Now, you have already testified that the ready-mix was hauled approximately ten miles between the plant and the place where it was used?

A. Yes.

Q. Would that have any effect upon the yardage obtained at the pouring site?

A. Yes; it would. We complained bitterly about this throughout but they didn't seem to believe it.

Q. You didn't make it stick? [1264]

A. No; and the people who worked there previously told us that they always used 25 cubic feet per cubic yards instead of the 27 which we were foolish enough to use.

Q. Now, was there any other reason than this difficulty caused by the haul, in other words, your yardage does not pan out at the site as it did at the mix plant, was there any other reason?

A. We used more concrete in our backfill than was anticipated.

Q. Now, what do you mean by that, will you explain it?

A. Oh, in our trenches, for instance, in H area the sides would be sloped and instead of a back-filling with dirt, tamping it, which wasn't available, the dirt wasn't there, we backfilled with the concrete and some of this was over and above what was

(Testimony of Ramon E. Reed.)

originally contemplated. In H area we had a man-hole that turned out to be pretty well contaminated and our excavation around this manhole was much larger than would ordinarily be figured and then the earth underneath the floor slabs was gravel and it was difficult to excavate that right to the excavation lines. The AEC or GE, they don't go for much backfilling underneath their floors and foundations, so this had to be right; anything over and above had to be filled with concrete.

Q. In other words, if you put the concrete in there you [1265] didn't get paid for it but, nevertheless, it went in?

A. That is correct.

Q. Well, now, I only brought this out because it had been raised on cross-examination. Will you tell us, now, whether the cost of concrete appears any place in Plaintiff's Exhibit 33?

A. No, sir; there is no concrete cost whatsoever in these figures. This is all form materials and lumber and material that went into the forms in which the concrete was poured.

Q. Well, then, the materials on the sheet two do not include the cost of the concrete itself?

A. No, sir.

Q. Regardless of whether it was one yard or a thousand yards?           A. No.

Q. Mr. Reed, I believe you have already testified that the initial completion date on the 100-F area was October 1st and initial completion date on the 100-H area was December 1st, 1956. What effect



(Testimony of Ramon E. Reed.)

upon the costs of performing this project did the running over of this job into the winter months of 1956-57 have?

A. Why, your costs are always increased in winter weather.

Q. Now, to your knowledge is any claim being asserted here [1266] on account of that cost?

A. Not to my knowledge, no. If your efficiency drops, it just costs more.

Mr. DeGarmo: I have no further questions of Mr. Reed.

Mr. Carey: Have you got anything?

Mr. Etter: I may have. I notice it's 11:00 o'clock.

The Court: We may as well take a ten-minute recess.

(Whereupon, a recess was taken for a period of ten minutes.)

The Court: Proceed. Had you finished?

Mr. DeGarmo: Yes; I had completed my redirect.

The Court: Your first cross.

#### Recross-Examination

By Mr. Etter:

Q. I have just a few questions. Now, Mr. Reed, there was some reference made to Exhibit 23, do you recall what that is, which is the scheduled actual revenue and revenue shortage? A. Yes.

Q. Now, the thing, this projection of yours originally that you made was a projection with re-

(Testimony of Ramon E. Reed.)

spect to revenue, isn't that correct, ultimately it ended up with a projection as to revenue as indicated in Exhibit 24, I mean? [1267]

A. Those curves are based on revenue.

Q. Those curves are based on revenue? And this chart was drawn up following the making of Exhibits 21 and 22, isn't that true?

A. That is right.

Q. Yes. Now, likewise, in the bill of particulars, the amended bill of particulars on the item, I think it's Item 11, "Loss of Profits," so-called; in determining the loss of profits, the determination is made in the amended bill of particulars by taking the revenue, that is, the scheduled revenue, of April, May and June, minus the revenue that did come in in June, and totaling it and then taking the average per day of the projected revenue during the strike period at 10%, that is the method that is arrived at here; in other words, this projected revenue chart, Exhibit 24, and Plaintiff's 23, was followed precisely as to April, May and June in determining your claim for profits, isn't that true?

A. I don't know as we have a claim for profits.

Q. Well, unless counsel wishes to withdraw it, as I see it, it's about \$64,000, isn't it?

Mr. DeGarmo: I can tell you this, Mr. Etter, I did not examine this witness concerning that item and we are not giving up the question of a mark-up on the cost but we are not claiming it in the same form that [1268] you have asked the question.

Mr. Etter: No; but we have a right to our

(Testimony of Ramon E. Reed.)

theory. You want to keep away from this projected revenue but you want to use it when you charge us with profits.

Mr. DeGarmo: I don't want to keep away from it at all; I am very happy with it.

Mr. Etter: Well, I am, too, so we shouldn't have much of a dispute about it.

(Last question read.)

Mr. Etter: I will start with shorter questions.

Mr. DeGarmo: If you will show him the bill of particulars. You still have to understand that this witness has been out of the country.

The Court: Well, I think you have to take into consideration, too, that the bill of particulars is usually prepared by the attorney working with some witnesses and you didn't work with this one.

Mr. DeGarmo: I am sure I didn't because he wasn't here.

Q. (By Mr. Etter): Now, here is, furnished by bill of particulars, a claim or explaining the method of arriving at a profit. Now, original scheduled revenue for April is \$240,513, that is the same figure as that one, is it not? A. That is right. [1269]

Q. For April? May is \$248,805, is that correct?

A. That is right.

Q. And June, \$213,262, minus actual revenue \$149,072, which follows right here, and here (indicating)? A. That is right.

Q. Isn't that correct? A. That is right.

Q. All right. Then, if you notice the average per



(Testimony of Ramon E. Reed.)

day is reached of the total scheduled revenue, of the actual revenue, and with a net revenue short based upon that strike period, correct?

A. That is right.

Q. From that is a total loss of profit figured at nine days times the net revenue short at 10% or this net revenue, one sixty-four ninety?

A. That is right.

Q. And that is based, is it not, on this projection, which is Exhibit 24, and this Exhibit, which is 23?

A. That is correct.

Q. Now, on the same basis is it not a fact that in December, January, February and March, up until the date of the strike, your scheduled revenue was \$625,179 total scheduled revenue?

A. That is right.

Q. And isn't it a fact that the revenue shortage prior to [1270] the strike, the projected revenue shortage, well, I mean the shortage, at least on the projected scheduled revenue, was \$226,852?

A. That included several days of strike.

Q. All right. Let's say it did. I mean, in March down here through June, or 98 days, includes several days, doesn't it, when there wasn't any strike?

A. Yes, but inefficient days.

Q. Yes, but you asked for that in another one, "Inefficiency Shortage," haven't you? What I am saying, this is a fairly representative figure, maybe a thousand one way or the other?

A. Well, several thousand.

Q. Yes, but made up probably here, wouldn't

(Testimony of Ramon E. Reed.)

it be? All right, but that revenue shortage even before the strike was \$226,000, or a quarter of a million dollars under your estimate during the first four months you were working, isn't that right?

A. Yes.

Q. And yet in projecting, or yet in determining the amount of profit you people are proceeding on the assumption that your scheduled revenue of \$240,513 in April, \$248,805 in May, would all be there and you are basing it on an absolute, isn't that right?

A. Well, there was that number of days that we didn't work [1271] that you should be making a profit.

Q. That you should be making this revenue?

A. Yes.

Q. But you should be making it the first, January, February and March, isn't it true you should be making it then, too? A. Yes.

Q. As a matter of fact you were \$226,000 short?

A. As a matter of fact there are several instances of delays that was making that.

Q. Precisely, but they were not delays the Union caused? A. Not this Union.

Q. There was \$226,000, at least, that you were short in projected revenue on the first four months?

A. In those months that was the best weather in the year, there was no reason why we shouldn't have been back making this revenue.

Q. When you first set this up there wasn't any

(Testimony of Ramon E. Reed.)

reason why you didn't figure that you shouldn't make the first four months, isn't that right?

A. Well, we were scheduled to make it.

Q. Now, you have also testified that after the strike in August and September you had a lot of increased costs and a tremendous, or a difficult time, getting efficient crews together, and one thing and another, isn't that [1272] right?

A. That is right; very correct.

Q. Now, at the end of this strike in July, taking the month of July, your revenue shortage in July on your projection, that is referring again to your exhibit here, 24, your revenue shortage aside from your projected scheduled revenue as it appears here, was \$824,000, wasn't it? A. Yes.

Q. Isn't that right? In other words, over three-fourths of a million dollars you were behind after this strike? A. That is correct.

Q. All right. Now, down here in November of 1956 you had decreased that \$824,000 so that your revenue shortage to date in November of 1956 was only \$292,000, isn't that right? A. Yes.

Q. In other words, you had reduced this entire revenue shortage or, rather, in December or November, in those four months, five months, from \$824,000 to \$292,000? A. Yes.

Q. You did a lot of work in there to reduce that, didn't you? A. Yes.

Q. And to pick up your revenue, isn't that [1273] right? A. Yes; must have.

Q. In other words, you picked up more revenue



(Testimony of Ramon E. Reed.)

in less time after the strike than you ever did before the strike or during the strike?           A. No.

Q. Isn't that right?

A. Well, there is a lot of reason why that is.

Q. Well, there may be a lot of reason, but isn't that a fact, isn't that the fact, that your revenue shortage was decreased from \$824,000 to only \$292,000 in November of 1956?

A. There is lots of factors in there.

Q. Will you answer that question; you can explain it? Will you answer that question? Have you done that?           A. Yes, sure, we reduced it.

Q. So that as Mr. Carey inquired the other day, these original projections and estimates of yours were just something you hoped had happened, isn't that right, isn't that true?

A. They are something that do happen. I mean, we have a reputation of following schedules, that is why we get the business.

Q. I am talking about this case. You didn't follow the schedule here, did you?

A. We couldn't; we had a strike that delayed us, and [1274] inefficiency.

Q. I don't care about your reputation, the first four months when these defendants had nothing to do with it, it has been brought out that you were a quarter of a million dollars behind.

A. It has been brought out the reason why we were behind, weather, and things over which we had no control.

(Testimony of Ramon E. Reed.)

Q. In looking over those projects do you try to determine what your weather might be?

A. Yes.

Q. I think your weather will show you that you had colder weather this month than you had previously or in '55 or '54, do you know what the weather was?

A. I don't know right now, but it has been checked.

Q. And these other matters that you talked about, for instance, the contamination, you say you didn't determine what the extent of the contamination was?

A. That is something that is hard to determine, Mr. Etter.

Q. Yes, but it was a risk, hazard, when you made this bid, wasn't it?

A. That is correct.

Q. Surely, and you say you ran into some steel construction when you wanted to tie in to some sewer lines?

A. That is right.

Q. Did you examine at all any maps? [1275]

A. Yes; it wasn't shown, it was as much of a surprise to other people as it was to us.

Q. It was not indicated?

A. No.

Q. Have you ever had that happen before?

A. Yes.

Q. You have had that happen before? In other words, aren't these things ordinarily taken into consideration in any bid?

A. No; I don't think so.

(Testimony of Ramon E. Reed.)

Q. I mean, you bid a job with the certainty that the weather is going to be all right?

Mr. DeGarmo: Mr. Etter, will you let the witness answer the question?

The Court: Did you give the witness time to answer?

Q. (By Mr. Etter): Have you completed it?

A. Your weather, you bid on average weather. There is always things that come in at the beginning of a job that you don't figure on, possibly, but you work to make those up later on.

Q. All right, but you want the Court, however, to accept as the fact and not as speculation and conjecture that you would have had this original scheduled revenue coming in every month during April, May and June, although that wasn't the fact for the four months preceding? [1276]

A. In April, May and June we would have had it, April, May and June were the best weather that year.

Q. Your statement is now to his Honor that you absolutely would have had each month, in April, May and June \$240,513, \$248,805 and \$213,262?

A. I wouldn't swear we would have right to that dollar value, but our forces we had organized, we were ready to, we were just where our work was organized and going the way it should. The weather was perfect and we were set up to proceed in an expeditious manner when the strike came.

Q. Those were three important months then, were they? A. Very important, yes, sir.



(Testimony of Ramon E. Reed.)

Q. And those were three months when it was important that your projected scheduled revenue be coming in? A. Yes.

Q. And your projected scheduled revenue is an important part of this job, isn't that right, meeting the deadlines?

A. Well, your revenue determines the progress you are making.

Q. And so if you had received those amounts in those three months, you would have been making good progress in accord with your projection?

A. That is correct. [1277]

Q. Now, when you were \$824,000 short after the strike and you reduced that to \$292,000 between the end of the strike and November, you were making good progress then, weren't you?

A. Not for several weeks after the strike.

Q. Well, I am talking about the four months, this chart, you said that would be.

A. There was quite a while in that four months that we were not making good progress.

Q. You said if you had attained these amounts that are on your projected scheduled revenue you would be making good progress, that was your testimony?

A. We would have been on schedule.

Q. Now, here in June, although you were \$824,459, you had a revenue shortage of that amount, you reduced that by, actually, about \$552,000, as I see it here.

Mr. DeGarmo: In which month?

(Testimony of Ramon E. Reed.)

Q. (By Mr. Etter): From July to November, the revenue shortage was reduced over half a million dollars, reduced right down; in other words, you made up or, rather, you were making your scheduled and you were picking up on your back?

A. Certainly, we had to, we had to get down or we would face liquidated damages.

Q. In line with your previous testimony, you were making [1278] good progress up until November, in those months?

A. In the former months, not in all those months.

Mr. Etter: That is all.

\* \* \*

### RALPH NELSON

called and sworn as a witness on behalf of the plaintiff, [1279] testified as follows:

#### Direct Examination

By Mr. DeGarmo:

Q. Will you state your full name for the record, please?      A. Ralph Nelson.

Q. And where do you presently reside, Mr. Nelson?      A. Palmer, Washington.

Q. And where is that, Palmer, Washington?

A. It is about nine miles north of Enumclaw, thirty-five miles from Seattle.

Q. And what is your business or occupation, Mr. Nelson?      A. Construction office manager.

(Testimony of Ralph Nelson.)

Q. And where are you presently employed and by what organization?

A. I am employed by Morrison-Knudsen on a project on relocation of the Northern Pacific Railroad. This is a relocation. The reason the railroad is being relocated is on a future dam there at Eagle Gorge on the Green River.

Q. And you are the office manager on that job, are you?      A. Yes, sir.

Q. Mr. Nelson, were you at one time the office manager on the Hanford Project job?

A. Yes, sir; I was.

Q. During what period of time did you serve as office [1280] manager of that job?

A. From the beginning of the project in December of 1955 and I closed out the office in Richland in May of '57.

Mr. Carey: Just a minute.

The Court: December of '55 to May of '57?

A. Yes, sir.

Q. (By Mr. DeGarmo): That was, then, the entire period of the performance of that contract?

A. That is right.

Q. Now, Mr. Nelson, will you tell us what background training you have had as an office manager and in that type of work?

A. I started in following two years of business college in 1938. I was employed by Bonneville Power Administration on transmission line and substation construction. I worked in various locations from 1938 to 1940. On most of those jobs I was field clerk



(Testimony of Ralph Nelson.)

on jobs contracted; in other words, the actual work was contracted out. In 1940 I went into the army and returned in 1944. I went back to work for Bonneville for about six months. Then I left them and went to work for Giagutter Electric in Seattle; that was on transmission line construction. The job I was on there was from Arlington, Washington, to Blaine, Washington. That was in 1946 and '47. At the completion of that job I went to work for the [1281] Northwest Packing Company in Portland. I was handling the dog food end of their business, doing the buying of the materials and shipping and warehousing, and in 1948 I went to work for Smith Bros., a Vancouver contractor. I worked until 1951 on various transmission line and road construction projects as field office manager. In 1951 I went into their main office as the accountant. In 1954 I went to work for Morrison-Knudsen as an accountant on the Timothy Meadows project.

Q. Timothy Meadows is in Oregon?

A. In Oregon outside South Estacada, Oregon. In February of '55 I was transferred down to Taft, Oregon, as office manager on a road job for the Bureau of Public Roads. There was a forest access road. I remained on that job as office manager until I was transferred to Richland.

Q. All right. Now, Mr. Nelson, will you tell us in a general way what are the duties of an office manager with Morrison-Knudsen Company on a project such as the Richland project?

A. Basically, we are in charge of payroll and

(Testimony of Ralph Nelson.)

personnel accounting, purchasing and the organization of the office.

Q. Where was the office located, the project office located at the Richland project or the Hanford project?

A. We were located in the Joseph Building in Richland. It [1282] was over the J. C. Penney Company.

Q. Was that where your headquarters were?

A. That was my headquarters, yes.

Q. And who else of the project organization had offices at that same location?

A. Mr. Reed, the project manager, and then I had two women who worked for me.

Q. Will you tell the Court what type of books are kept on a project such as the Hanford project?

A. We maintain a general ledger. It's the regular bookkeeping ledger. As the books of original entry we use what we call a voucher check register. All the checks and the vouchers we write are posted to that and we use what we call a Boise office account journal that is for recording all more or less inter-company transactions.

Q. Was that, generally, the general books of entry?

A. Yes; there are supporting data to those books, yes.

Q. And have you brought with you to court today the books that you have just mentioned?

A. Yes, sir; I have.

Q. For the Hanford project?

A. Yes, sir.

(Testimony of Ralph Nelson.)

Q. And as I understand it, you have a good many other supporting documents which are not in court here, but which are available?

A. Yes, sir. [1283]

Q. Who actually performed the work of keeping these books, Mr. Nelson?

A. I did that myself, yes, sir.

Q. And have the books been in your care and custody since the inception of this job?

A. Yes, sir; they have.

Q. The physical books themselves were taken to the Eagle Gorge project with you, is that correct?

A. Yes, sir.

Q. Mr. Nelson, during the work at the Hanford project did you have occasion at any time to visit the project site?

A. Yes, sir; I did.

Q. You had clearance to the area, did you?

A. Yes, sir.

Q. With what frequency would you go out to the site of the work?

A. Well, ordinarily I would go out at the end of the month; that would be a regular visit to make various checks before I closed out my monthly books, and at other times it would be just if anything came up, I would go out.

Q. Now, were you familiar, Mr. Nelson, with the fact that a strike of the Teamsters and Operating Engineers occurred at this project?

A. Yes, sir.

Q. And as of what date? [1284]



(Testimony of Ralph Nelson.)

A. The strike began March 22 of 1956 and was ended June 6, 1956.

Q. When was work actually started?

The Court: March 22 was the beginning date?

A. Yes, sir.

Q. (By Mr. DeGarmo): And ended June 6? Was there a continued interruption of work which took place immediately after the termination of the Teamsters and Operating Engineers strike?

A. Yes, sir, there was; yes, sir.

Q. What was the occasion or reason for that?

A. Well, the first week we did not have our supervision available. The second week we called for men, on June 11th, the Laborers furnished us a few men, but the Carpenters refused to send any Carpenters to the job.

Q. Then when, in fact, did work actually commence or be resumed after the strike which occurred on March 22?      A. June 17.

Q. Of 1956?      A. '56, yes. [1285]

\* \* \*

Mr. DeGarmo: Could I have Exhibit 28, Mr. Clerk? [1298]

Q. Mr. Nelson, I am handing you Plaintiff's Exhibit 28; are you familiar with that exhibit (hands paper to witness)?      A. Yes, sir.

Q. Now, there are listed on this exhibit, which is headed, "Cost to Employ Men to Pre-level Strike," the names of a number of workmen who it states did terminate their employment due to

(Testimony of Ralph Nelson.)

strike. I want to ask you if those were all of the workmen known to you who did not return to the project and who had been employed on the project prior to the strike?           A. Yes, sir.

Q. Now, in the right-hand column is indicated, "Process Time." Will you tell us what is involved in process time?

A. Process time was figured from the time these men reported to our office, we made out the security papers required by the Atomic Energy Commission and then we sent them in to the AEC security office. From there they were sent to the hospital for medical examination, and then when they reported back to our office that was the termination of the process time.

Q. And was there some separate record kept of the process time from which you were able to make up that exhibit?           A. Yes, sir. [1299]

Q. Were there instances, Mr. Nelson, where workmen would not be cleared?

A. Yes; it did happen.

Q. Had the workmen who were on the payroll at the time of the strike, the names of whom are listed in the left-hand column on Exhibit 28, already obtained and been cleared through security?

A. Yes, sir.

Q. And had they clearance?           A. Yes, sir.

Q. Upon what basis was the time charged, process time; in other words, how did you arrive at the charge for that?

A. It was their hourly rate from the time they

(Testimony of Ralph Nelson.)

reported to our office until they reported back at the end of the medical examination.

Q. Yes. The next item of examination will relate to Item No. 8. Exhibit 29, please. I am handing you, Mr. Nelson, Plaintiff's Exhibit 29 and I would like to ask you with respect to this exhibit from what source is the list of equipment which appears in the left-hand column obtained?

A. From our equipment records and from physical inventory.

Q. Will you state how this equipment record is kept as a part of the company records?

The Court: What is that exhibit? [1300]

Mr. DeGarmo: 29.

The Court: All right, that is in evidence, isn't it?

Mr. DeGarmo: I think it has been admitted.

The Clerk: It has.

The Court: Yes, all right.

A. At the time a piece of equipment is transferred to our job the transferring offices makes out an equipment transfer record and they forward one copy to the receiving contract. We use that to check that the equipment does arrive on the job.

Q. (By Mr. DeGarmo): And when equipment leaves the job, what is done?

A. Well, the procedure is reversed, our office will originate an equipment transfer and forward the transfer itself to the receiving contractor office.

Q. Will you state, Mr. Nelson, if you assisted in the preparation of Plaintiff's Exhibit 29?

A. I worked on that in connection with the



(Testimony of Ralph Nelson.)

equipment that was on the job and the length of time it was on.

Q. All right. From what source, or how did you determine the length of time that the equipment was actually on the project?

A. By referring back to our equipment records, we have the date that it arrived on the job and also the date that it would have left the job. [1301]

Q. Then these figures which appear here as to "Move From Job Site," those would be taken from your equipment records, is that correct?

A. Yes.

Q. Then, in arriving at the amount of rental claimed or the equipment rental claimed, I notice there is stated as AGC and AED; now, are you familiar with the two terms and what they refer to?

A. Yes, sir.

Q. Will you state what is AGC?

A. AGC refers to a rental schedule prepared by the Associated General Contractors.

Q. I am handing you Plaintiff's Exhibit 34 for identification and ask you if you recognize that as one of the AGC construction equipment rental books (hands book to witness)?

A. Yes, sir; it is.

Mr. DeGarmo: I offer this document in evidence at this time.

Mr. Etter: I don't know what to say about that, frankly. As I understand, yesterday you couldn't effect a comparison between that and the prices that appeared here.

(Testimony of Ralph Nelson.)

The Court: I think that was the evidence.

Mr. DeGarmo: That is the other one, but not this one. [1302]

The Court: There is the other one to match up.

Mr. DeGarmo: That is the AED.

Mr. Etter: Well, may I inquire, does the comparison with this jibe with these figures?

Mr. DeGarmo: I would have to ask the witness because this does not list monthly sums as does the AED. This lists a different method of determination.

Q. Mr. Nelson, how do you go about determining a rental rate from an AGC manual?

A. You check the type of equipment and any attachments or anything that would be listed in here and you apply these percentages that are here against the original cost of the equipment.

The Court: Pardon me, I was just going to say, however, while it may not be directly shown, the figures in your Exhibit 29 are computed on the basis of this document, is that correct?

A. Yes, sir.

Q. (By Mr. DeGarmo): I call your attention, Mr. Nelson, to the first sheet of this exhibit and to this language:

“In using this schedule it should be remembered that it contains no element of profit or return sufficient to justify continuous reinvestment in construction equipment for rental to others. The rates shown will [1303] ordinarily

(Testimony of Ralph Nelson.)

not be rates on which a firm renting equipment could exist. A contracting firm desiring to rent its equipment would need to add a ready-to-serve charge to cover its equipment in addition to a profit."

And I will ask you if, in making your computations for Plaintiff's Exhibit 34, you did, in fact, add anything to rates for overhead and profit on the AGC computed equipment?

The Court: What is the number of that one?

Mr. DeGarmo: I again offer it.

The Court: I think it should be admitted to show the basis of the computation.

Mr. DeGarmo: That is the only purpose of it.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 34.)

Q. (By Mr. DeGarmo): And will you state, Mr. Nelson, what is meant by AED?

A. That is the Associated Equipment Dealers.

The Court: Let's see, what is the number of that exhibit?

Mr. DeGarmo: 35.

The Clerk: 34 just admitted.

Mr. DeGarmo: That is right; this is 35.

Q. Are you familiar with the AED book, rental books, Mr. [1304] Nelson?

A. I have used it in my work.

Q. Have you been on jobs where equipment has been rented under AED schedules?



(Testimony of Ralph Nelson.)

A. Yes, sir.

Q. And have you been on jobs rented under it, I mean, rented by the person for whom you were working?

A. Yes, sir.

Q. And have you been on jobs where equipment has been rented to others under the AED rental?

A. Yes, sir; I have.

Q. I am handing you what is marked as Plaintiff's Exhibit 35 for identification and ask you if you recognize that as a 1956 AED rental book (hands book to the witness)?

A. Yes, sir; it is.

Q. Can you tell us what book was used as to year in the computation of the rentals as shown on Plaintiff's Exhibit 29?

A. That would have been the 1955 edition.

Q. Approximately when in the year do the books for the current year come out, that is, the year with the current date on it?

A. Oh, I would say probably around in June, or a little later. [1305]

Q. So that in 1956 you could not have an '56 book until some time in the latter part of the year?

A. That is right.

Q. Now, in the AED equipment rental books, is there any statement made as to the basis for the charge which is there shown?

A. Well, these are average rates generally charged by equipment dealers throughout the country.

(Testimony of Ralph Nelson.)

Q. May I have the book for just a minute? I call your attention to the following statement which appears on page, well, it is not a numbered page, but it is the page immediately following the foreword in Plaintiff's Exhibit 35 for identification, reading:

“Rentals are payable in advance and subject to the terms and conditions of the lessor's rental contract. No insurance, license, sale or use taxes are included in these rates.”

The Court: What was that last item?

Q. (By Mr. DeGarmo): “No insurance, license, sale or use taxes are included in these rates,” and I wish to ask you if in preparing Plaintiff's Exhibit 29 there was any addition made to the basic AED rates for the items which the volume states are not included in the rental rates?

A. No, sir; there was none.

Q. So that the figures which appear in Plaintiff's Exhibit [1306] 29 would not include any insurance, license or other items than the basic cost?

A. No, sir.

Mr. DeGarmo: Or the basic rental rate, rather? I offer this document only for the purpose of showing the basis upon which the rentals are computed.

Mr. Carey: What is that number?

Mr. DeGarmo: This is 35.

The Court: I suppose there is some difference be-

(Testimony of Ralph Nelson.)

tween '55 and '56. The only statements that were made here is that this is slightly higher.

Mr. DeGarmo: I will have some further testimony. This is higher.

The Court: Well, it will be admitted for the purpose of showing the general basis of your computations.

Mr. DeGarmo: We would like to make our computations under this because we get more money, but I think we are already stuck with the other.

Mr. Carey: We think you are stuck with your own list.

Mr. DeGarmo: Well, we will argue that when we get to it.

The Clerk: Plaintiff's 35.

The Court: 35 is admitted, then.

(Whereupon, said document was [1307] admitted as Plaintiff's Exhibit No. 35.)

Q. (By Mr. DeGarmo): There is one further figure on here that I want to call to your attention, Mr. Nelson, for an explanation on the last column on the first page, and two items under "Move-In Cost," will you tell us from what source those figures came, if you know?

The Court: Let's see, what is that number again, please?

Mr. DeGarmo: It's 29; it's on the first page.

The Court: I know what he refers to.

Mr. DeGarmo: In the last column.



(Testimony of Ralph Nelson.)

Q. Well, the particular two figures which I refer to are in the right-hand column on the first page, there are just two figures in that column which make it the total of seven hundred seventy.

A. Those figures would have been taken from the voucher which was prepared in payment of the bill of the firm which moved this crane in.

Q. Was it moved in by your own men or by someone else?

A. No, sir; I would have to check, but I believe it was Wilhelm Trucking Company, from Portland.

Q. Well, then, that would represent the actual cost figure of move-in?      A. Yes, sir. [1308]

Q. And when it was moved out, who moved it out?      A. I believe it was the same firm.

Q. Do you know, Mr. Nelson, where that came from to the Hanford project?

A. It came from Estacada, Oregon.

Q. And at what time did it arrive, with respect to the commencement of the strike?

A. It was just immediately before the strike, I believe.

Q. And for what period of time was the equipment held there at the project awaiting the end of the strike? May I have that exhibit again, please?      A. It was shipped June 25, 1956.

Q. That is to go back to where?

A. No; I have the wrong one, May 23rd.

Q. And that is the date shown here on Exhibit 29 as the move-out date?      A. Yes, sir.

(Testimony of Ralph Nelson.)

Q. Do you recall, Mr. Nelson, when this exhibit covering the rental of equipment was originally prepared?

A. It was either right during the time at the latter part of the strike or immediately after.

Q. Now, there has been a change made in the second page of the exhibit, do you recall and can you explain what that change was from the way it was originally prepared?

A. Yes. Originally, we had under the item of "Uniform [1309] Concrete Form Panels," we had listed 17,500 square feet, roughly, 7,500 of those feet had been rented from an equipment dealer from Seattle and we removed that from here.

Q. And where did the rental on those forms appear elsewhere in the claim?

A. Under Item 16.

Q. And was that something that came to light when the accountants for the defendants were examining the records?

A. Yes, sir.

Q. And the exhibit was then corrected, is that right?

A. Yes.

Q. Mr. Nelson, in the claim as originally submitted by Morrison-Knudsen Company to the defendants was included an item for liquidated damages, are you familiar with the fact that that claim was later eliminated?

A. Yes, sir; I am.

Q. As the office manager of the project, are you familiar with when extensions of time are ultimately obtained which resulted in the elimination

(Testimony of Ralph Nelson.)

of the liquidated damage item? A. Yes, sir.

Q. Can you state when that was?

A. Do you mean when we actually received the extensions?

Q. When it was determined that extensions would be granted [1310] which could eliminate any claim for liquidated damages?

A. That was right at the end of the job, it would have been in April or May of '57.

Q. Are those extensions given in the form of a modification or change to the contract?

A. Yes, sir.

Q. Mr. Nelson, Mr. Reed had departed from the project at the time substantial completion was accomplished of the 100-H area; can you tell from your records when substantial completion of that area was accomplished?

A. April 18, 1957. [1311]

\* \* \*

Mr. DeGarmo: The next testimony of the witness will relate to Item No. 16. May I have Plaintiff's Exhibit [1320] 33, please? Has this exhibit been admitted, Mr. Clerk?

The Clerk: No, sir.

The Court: No; it hasn't.

Q. (By Mr. DeGarmo): I am handing you Plaintiff's Exhibit 33 for identification, Mr. Nelson. Will you state if you assisted in the preparation of that exhibit (hands paper to witness)?



(Testimony of Ralph Nelson.)

A. Yes, sir; I did.

Q. And just for the purpose of the record, will you state what the exhibit covers, just generally?

A. This covers the labor cost and supply cost of our concrete items.

Q. On the first sheet of the exhibit under the heading of "100-F Area" appears "Labor Cost to March 31, 1956, \$51,417.85." Will you state the source from which you obtained the figure of \$51,417.85?

A. From our general ledger.

Q. Well, now, will you explain to the Court and to counsel how you are able to determine what your labor cost is as to a particular item of work?

A. Every man on our job under an hourly pay rate submits a time card each day showing how many hours he has worked. The foreman in charge of that particular crew that this man is working on breaks his working time down into so many hours spent on each item. We used the [1321] time cards to prepare our payroll and every day we used the foreman's report, which is what the foreman consolidates the time cards for his crew on, and make a breakdown of the cost, daily cost, for each piece of work that that crew or that particular man has done.

Q. Now, does your construction project ledger contain this breakdown as a part of the permanent records of the job?

A. Yes, sir.

Q. So that these individual cards that the workmen keep, turned over to the foreman, consolidated

(Testimony of Ralph Nelson.)

by him and turned into the office, ultimately find their way into the permanent bookkeeping records?

A. Yes, sir.

Q. And was it from that source that you determined the \$51,417.85 as of March 31, 1957?

A. Yes, sir.

Q. Then there appears a figure of 1,810 cubic yards of concrete poured. Can you tell us from where that figure came?

A. That figure came from a breakdown of the revenue that we received for that period of time up through March 31.

Q. And how do you determine what revenue is received for a particular item?

A. From our partial payment estimate.

Q. Then we have a labor cost to September 30, 1956, of [1322] \$140,889.43. Would that figure be obtained in the same manner as the first figure?

A. Yes, sir.

Q. Now, to go back a step, you have shown here \$28.41 as the cost per cubic yard of concrete poured to March 31, 1956. How did you arrive at that precise figure?

A. By dividing \$51,417.85 by 1,810 yards.

Q. In other words, the total cost by the yardage poured?

A. Yes, sir.

Q. Produced the average cubic yard cost?

A. Yes, sir.

Q. All right. Then you have in this exhibit done what next?

(Testimony of Ralph Nelson.)

A. I subtracted \$51,417.85 from the \$140,889.43 to arrive at a labor cost from March 31 to September 30 of \$89,471.58.

Q. Now, as a matter of fact, no concrete was poured subsequent to the 22nd of March, was it?

A. No, sir.

Q. But the month end figures would show any concrete poured up to that date, including that poured prior to the 22nd of March?

A. Yes, sir.

Q. All right. And then what did you do, you obtained after you got your figure of \$89,471.58, the cost of [1323] labor for pouring concrete between June 6, 1956, and September 30, 1956.

A. And I divided that figure by 2,253 cubic yards.

Q. And, again, how did you get the 2,253 cubic yards? A. From our concrete records.

Q. And was the \$39.71 per cubic yard obtained in the same manner by dividing the total cost for the period by the yardage poured in the period?

A. Yes, sir.

Q. And then what did you do?

A. Arrived at an excess cost of labor, a difference of \$11.30.

Q. What does that represent?

A. That represents the difference in labor cost between the periods before the strike and after the strike up through September 30.

Q. And then you did what in order to arrive at a claim figure?



(Testimony of Ralph Nelson.)

A. That figure was multiplied by 2,253 cubic yards to show an excess cost for that period.

Q. Well, now, was the 2,253 cubic yards the concrete that was poured between the end of the strike and September 30?           A. Yes, sir.

Q. Then you have a similar computation shown here for 100-H area. Does the same explanation apply to that area as to [1324] the 100-F and the explanation that you have just given?

A. Yes, sir.

Q. Let me ask you, Mr. Nelson, if you can, I note on this exhibit that the cubic yard cost prior to the strike on the 100-F area was \$28.41, whereas, the cubic yard cost on the 100-H area was \$28.91. Do you have any information as to why one would be larger than the other?

A. No, sir; I don't.

Q. You are not familiar with the reasons? You do know that that is what the figure shows?

A. Yes, sir.

Q. All right. Now, let's take the second sheet of the exhibit and will you tell us what the second sheet relates to?

A. This is our supply cost on concrete.

Q. Now, there was a question raised here yesterday as to what is included in supply cost or in supplies for concrete. Can you detail that with a little particularity?

A. Well, supplies would be your lumber on this job, there was the uniform panels, the rental of those would be included as a supply cost; nails,

(Testimony of Ralph Nelson.)

forms, oil, Hunts process oil, and your tie rods, and all the various hardware you use in your forms, small tools like vibrators, and the cost to the job of those, or any gasoline or Diesel that might have been in use in connection with [1325] this concrete, that would all be supplies.

Q. All right. Let me ask you, Mr. Nelson, in the keeping of your books and accounts and records, of this project, did you segregate supplies as to items the same as you did, that is, materials and supplies to items of work the same as you did labor? A. Yes, sir.

Q. So that you have a separate bookkeeping account of the materials and supplies which were purchased and used in connection with concrete as distinguished from structural steel and some of the other bid items? A. Yes, sir.

Q. And was it from that source that you obtained the figures which appear here?

A. Yes, sir.

Q. All right, so that if we wanted a complete detail of what was included under "Miscellaneous Small Tools," and so forth, we could go to the books and find what that related to, is that correct?

A. Yes; it would refer to where the supporting data was.

The Court: That account is, obviously, separate as to the two areas, too? A. Yes, sir.

Q. (By Mr. DeGarmo): So that it is not only segregated as to the item but as to the 100-F and 100-H areas? [1326] A. Yes, sir.

(Testimony of Ralph Nelson.)

Q. All right. The first item "Uniform Rental and Supplies," will you tell us what that, in general, covers?

A. Well, that would be the rental of the uniforms, itself, and the miscellaneous hardware.

Q. Well, now, by "uniforms," you don't mean the kind that you would put on and wear?

A. No, sir.

Q. What do you mean?

A. That was the steel forms with a plywood face that we used.

Q. Used for the purpose of holding the concrete during the pour? A. Yes, sir.

Q. All right. And then they are stripped after the pour and used again? A. Yes, sir.

Q. And from what source did you obtain the \$21,866.43?

A. From the general ledger for those items.

Q. Then we next have lumber.

The Court: Pardon me, Mr. Nelson, was that item of rental actually paid out or was it computed on the basis of rental value of the forms?

A. Part of it would be on the forms that we had rented.

The Court: You rented some and others you purchased [1327] or made yourself?

A. Yes, they were job purchased forms and we wrote them off at so much a square foot per month.

The Court: I see.

Q. (By Mr. DeGarmo): Then, we have lumber



(Testimony of Ralph Nelson.)

prefabrication forms \$1,712.14, would you state what that item covers?

A. That would include lumber for the job-built forms.

Q. Did you build some of the forms on this job rather than rent them? A. Yes, sir.

Q. And would that figure also come from the bookkeeping records of the corporation?

A. Yes, sir.

Q. And then we have scaffolding materials, what does that cover, or is that obvious?

A. That includes the supplies and the scaffolding that was used regarding the forms.

Q. Did you rent some scaffolding in connection with this project?

A. Yes, sir, some was rented.

Q. And that would include, then, both the rented scaffolding and that which was built out of lumber on the job? A. Yes, sir.

Q. Then, you have miscellaneous small tools, and so forth. Now, there was some comment yesterday that \$5,417.55 [1328] seemed a rather sizable item. Will you tell us what is included in that item, and if you need to refer to your detail in your books to cover it any better, do so.

A. Well, there could be form oil in there, or just Hunt's process oil.

Q. Now, what do you mean by "form oil"?

A. Oil that is painted on the forms to keep the concrete from sticking to the forms.

(Testimony of Ralph Nelson.)

Q. All right. And what is this Hunt's process oil that you are talking about?

A. I believe that is a curing agent, I am not sure. I know it by the name, I don't actually know what it is.

Q. You see the invoices all the time?

A. Yes, sir.

Q. All right, what else?

A. Any cost we would have in connection with small tools, vibrators and finishing machines, or anything like that. It might be Diesel or gas used in equipment that was used on this work, anything of that nature.

Q. And, again, is that figure reflected on the bookkeeping records of the corporation?

A. Yes, sir.

Q. And charged to this particular area of the work?

A. Yes, sir.

Q. Then we have "Strip Miscellaneous Tools, \$106.26," what [1329] would that relate to?

A. Oh, that would relate to some small tools that were used in stripping the forms.

Q. I notice without getting into 100-H too far, that in the case of 100-F we have \$106.20 under that item, whereas with H, it's only \$1.87. Can you tell use why that might be?

A. Yes, on small tools we write them off on the first job that they are used on; in other words, here probably the same tools were used in both areas but they were used first in 100-F, so therefore, they were wrote off on that.

(Testimony of Ralph Nelson.)

Q. Wrote off against that job and not against the second one? A. Yes.

Q. All right. Now, having listed those items you come up with what?

A. Our total supply cost of \$38,557.01.

Q. Now, at this point, Mr. Nelson, let's ask a question that Mr. Etter was curious about yesterday: Why in the case of the materials, did you not use the material cost to March 30 and then start again with your material cost after that date?

A. Under "Supplies" you have so much stuff that there is use on, your form materials, lumber, and so on. You use [1330] them over and over again. The longer you use them the less your supply cost will be.

Q. Well, from an accounting standpoint is it possible to break this item as of March 30 as you did the direct labor?

A. I could break it up, I could tell you what figure I had at that time, but it wouldn't mean anything. In other words, we may have gotten one use out of our lumber and later on we used it more times. It would have shown a high supply figure at that point. We didn't have as many reuses out of it.

Q. Well, from the standpoint of accounting is this method of using the total period more accurate than if you tried to make some arbitrary break as to March 22nd? A. Yes.

Q. All right. Now, the next figure which appears here is one for total yardage poured of 4168 cubic yards. From what source did that figure come?



(Testimony of Ralph Nelson.)

A. That is a figure of the actual concrete that we purchased from the Atomic Energy Commission for that area.

Q. And would that be a figure that would be obtainable from your books, or, at least, from the payment estimate? A. Yes; yes, sir.

Q. Again, did you keep a record of the concrete poured with respect to each of the areas, the 100-F and 100-H? [1331] A. Yes, sir.

Q. Then, from what source then came the estimated cost per cubic yard which shows on 100-F area as \$6.10? A. From the bid documents.

Q. Now, you did not assist in the preparation of the bid documents? A. No, sir.

Q. And you did have access, however, to the bid documents? A. Yes, sir.

Q. And then what did you do to obtain the figure of \$25,424.80?

A. Multiplied 4168 cubic yards by \$6.10.

Q. And then what was the next mathematical process that you used in this exhibit?

A. Subtracting \$25,424.80 from the \$38,557.01.

Q. And what did that produce and what does it mean?

A. It produced a figure of \$13,132.21 which, based on our original estimate of the \$6.10, was the additional cost per yard, or additional cost based on the total number of yards we had poured.

Q. Now, again, without going into detail as to every item in the 100-H area, does the same or was

(Testimony of Ralph Nelson.)

the same method of obtaining the figures and making the computations used?

A. Yes, sir. [1332]

Q. There was a change, was there not, Mr. Nelson, in this exhibit at a later date, subsequent to the filing of the amended bill of particulars?

A. Yes, sir, there was.

Q. Will you tell the Court and counsel what occasioned it, what occasioned that change?

A. There had been some material which we had purchased and was not used which we had returned to the vendor and afterwards we received credit.

Q. And is that reflected in these two items of credit shown under the 100-H area of \$837.29 and \$5.77?

A. Yes, sir.

Q. That reduced the amount of the claim then?

A. Yes, sir.

Q. And was it also found, was there a change in the total cubic yardage poured?

A. Yes, sir, at the time that this had been originally prepared I was in the Seattle office and I didn't have all my records with me. At the end of September there was a slight difference. I think someone had stuck the pour slips in their pocket and I didn't discover that my figures were wrong until after I closed out my books for the month.

Q. And did that result in a slight change in the cubic yardage poured? [1333]

A. Yes, sir.

Q. And then what was found to be excess costs in the 100-H area subsequent to the strike?

A. \$8,949.86.

(Testimony of Ralph Nelson.)

Q. Now, there is a third sheet to this, would you state what the third sheet is?

A. That is just a recapitulation of these items which were broken down on the other two pages.

Mr. DeGarmo: I now offer Plaintiff's Exhibit 33.

The Court: It will be admitted.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 33.)

Q. (By Mr. DeGarmo): Mr. Nelson, do you have any personal knowledge as to why the material costs which were incurred on this job in connection with the pouring of concrete exceeded those which had been estimated for the job?

A. No, I wouldn't ordinarily have that information in my position. I was in the office; I would leave that determination to others.

The Court: I think you said you didn't assist in the preparation of the bids?      A. Yes, sir.

The Clerk: Marking Plaintiff's 49.

(Whereupon, Plaintiff's Exhibit No. 49 was marked for identification.) [1334]

The Clerk: I will find it a little later, Mr. Nelson.

Q. (By Mr. DeGarmo): I think I am using Mr. Nelson more as a vehicle to identify than anything else. Mr. Nelson, I am handing you that which has been marked as Plaintiff's Exhibit 49 for identification. Will you state just generally what this exhibit is without detailing the figures (hands paper to witness)?



(Testimony of Ralph Nelson.)

A. This is headed up "Loss of Profits."

Q. Now, the items which are listed there are just the items which are included in the claim in this case?

A. Yes, sir.

Q. And I believe there has been evidence that has related to each of these items except the amount of the legal expense, is that your recollection?

A. Yes, sir.

Q. Then, at the bottom of the page, under Item 11 appears an item of 10% mark-up, what does that represent, Mr. Nelson?

A. That represents a mark-up on \$165,923.43, which would be the total of Items, 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16 and 17.

Q. Now, why is the figure of 10% used, if you know, Mr. Nelson?

A. Well, that is more or less a standard figure in the [1335] construction industry.

Mr. DeGarmo: I have no further questions of this witness at this time. You may examine. I did not offer that last exhibit because I will have further testimony.

The Court: I notice you didn't. [1336]

### Cross-Examination

By Mr. Etter:

\* \* \*

Q. Now, calling your attention here to Exhibit 29, have you that in front of you yet? No; here it is right here.

The Court: Yes; I have it here. [1340]

(Testimony of Ralph Nelson.)

Q. (By Mr. Etter): Here it is, Mr. Nelson (hands paper to witness), and that has regard to Item—now, where is my book, Item 8; oh, yes, equipment rentals. Now, as I understand, these are rentals that were arrived at by you in the use of the two books, that is, the manuals; I don't know what exhibits those are, offhand.

The Clerk: 34 and 35.

Q. (By Mr. Etter): 34 and 35, that is AGC and the AED manuals that you explained?

A. Yes.

Q. Now, were you keeping the records during your work as an accountant for the company during the time of the strike? A. Yes, sir.

Q. You were? And have you been in charge of the records the past several months?

A. Yes, sir.

Q. And you talked with Mr. George King, did you not, certified public accountant, who you allowed to check your books on behalf of the defendants? A. Yes, sir.

Q. And you made available to him, as I understand, these books and records such as he required for his perusal and examination?

A. Yes, sir. [1341]

Q. And on certain items I assume that you people talked a little bit about them? A. Yes.

Q. Is that right?

The Court: I didn't get the name of your accountant?

Mr. Etter: Mr. George King, of Morris & Lee.

(Testimony of Ralph Nelson.)

The Court: I see, all right.

Q. (By Mr. Etter): Now, on these rentals this rental per unit per month, did you or do you show in your books or your records with respect to this job or in the records that were made available to Mr. King, or did you discuss with him, was there anything in your records that showed that Morrison-Knudsen paid any of these rentals that are listed on Exhibit 29?

A. You mean, paid to some outside source?

Q. Yes.

A. I don't know; there wouldn't be anything that is remaining on this list as of now.

Q. No, but I mean looking, for instance, three-quarter ton pickup at the top there, rental per month, \$135; equipment rental on the job, \$270. Do your records indicate Morrison-Knudsen paid that?

A. No.

Q. They didn't rent this equipment and pay that price for [1342] it? A. No, sir.

Q. They did not? Do your books indicate at the present time aside from this lawsuit, and I am referring only to the job, do your books indicate any place a charge against the job of a cost item with reference to this same three-quarter ton pickup of \$270?

Mr. DeGarmo: Just a minute, Mr. Nelson. At this time, if your Honor please, I want to renew the objection which I made yesterday with respect to evidence of what internal auditing charges may have been made by Morrison-Knudsen Company



(Testimony of Ralph Nelson.)

between projects. I don't care to argue it again, I just want the record to show the objection and may it be continued as to each question that relates to that item?

The Court: Well, I will overrule the objection but please don't think that I am making a decision regarding it or I am drawing any conclusion. I will simply let it in here and then decide later on what the effect will be.

Mr. Etter: With regard, of course, to the other internal operations that counsel has used in determining or claiming his liability, their 4% override on money and their 10%, this which is internal.

Mr. DeGarmo: It is not internal; it's external.

Mr. Etter: You seem to want the internal ones that [1343] are a profit but you don't want these, counsel, if I can make that observation.

The Court: I will overrule that objection. Your answer was that you do not know?

A. I believe he asked at the last whether this \$270 had actually been paid to someone. My answer was "no."

Q. (By Mr. Etter): I will ask you whether or not in your records that you showed as Mr. King as indicative of the job records, whether you show apart from this lawsuit, whether you showed any charge to this job of an expense of \$270, as indicated for that three-quarter ton pickup?

A. No, sir.

Q. Now, isn't this true, with respect to all of the items that appear on this Exhibit 29?

(Testimony of Ralph Nelson.)

A. Yes, sir; that is right.

Q. And, as a matter of fact, this \$27,000 total that appears on the second sheet, that was not a cost item charged to this job, was it? A. No.

Q. Beg your pardon?

A. No; it wouldn't have been.

Q. It wasn't? Now, do you know how much money Morrison-Knudsen lost on this job?

A. Yes.

Q. How much? [1344]

A. As of December 31, 1957.

The Court: December 31?

A. Yes, 1957, the loss is indicated as \$322,196.93.

Q. (By Mr. Etter): \$322,196, and some odd cents? A. Yes.

Q. All right. Can you tell me whether or not in the loss that Morrison-Knudsen has sustained in the amount that you have just set forth, can you tell me whether or not that loss includes the \$27,000 that is listed as a charge on this Exhibit 29?

A. No, sir; it does not.

Q. It does not? Now, this job cost when this job was estimated was the \$27,000 total on Exhibit 29, was that used in cost estimate for this job as being the cost in that amount?

A. Well, there was equipment rental figured; I wouldn't say.

Q. Well, was it this amount?

A. There wouldn't be this figure, no.

Q. Well, you have had charge of the books?

A. Yes, sir.

(Testimony of Ralph Nelson.)

Q. Do you know how much you have charged on your books to equipment rental?

A. Yes, sir.

Q. Will you tell me? [1345]

A. (Witness refers to file): \$14,096.69, that is major equipment.

Q. You have charged \$14,000, you say?

A. Yes, sir.

Q. As equipment rental? A. Yes, sir.

Q. And that fourteen thousand that you have charged as equipment rental, does that have reference only to the items that are on this sheet, or does it include additional items?

A. Well, it would include equipment on the job during the life of the job.

The Court: That is for the full time of the job, I understand?

A. Yes; in other words, at the beginning or before or after the strike the equipment on the job wouldn't necessarily be this same equipment.

Q. (By Mr. Etter): It wouldn't necessarily be this same equipment? What I am trying to determine, however, is can you tell me, or have you had a chance to determine what the charges to the job of the equipment listed on Exhibit 29 actually was, not what you have listed here as the rental charge, if it was secured from AGC and AED rental figures, can you tell me what the actual cost of these items was as it appears in your contract? [1346]

A. Do you mean on AEC?

Q. No, all the items here, do you know what the



(Testimony of Ralph Nelson.)

charge made to the contract was on these items, the actual charge that Morrison-Knudsen made?

A. Do you mean on the whole job?

Q. No, for the period covered by the time of the strike.

The Court: Well, it wouldn't be on your books in that form?

A. No, it wouldn't be on the books in this form.

Q. (By Mr. Etter): Could you determine what pro rata charge as it actually appears on your books would be during this period? A. Yes.

Q. You have not done that, though?

A. No.

Q. I see. Do you know whether Mr. King did that while he was there? A. I don't know.

Q. You don't know? Did he discuss it with you?

A. I don't believe so.

Q. You don't believe so? Can you tell me whether or not in any of the cost accounting or cost charged to the job or final wind-up, or any part of the figures that apply to profit, loss, cost or otherwise, on this job, can you tell me whether apart from this lawsuit there [1347] are any charges of any nature indicated in the same fashion and at the same rate as appears in Exhibit 29 for the equipment listed?

A. No, there wouldn't be.

Q. Now, you also stated with respect to this exhibit, which is 29 again, I think you said that, and I am referring now to the total of the cost of two items which appear to the extreme right on the first page, a move-in cost, a total of which two items

(Testimony of Ralph Nelson.)

is carried forward on the second page in the amount of \$770.17, do you find that?      A. Yes, sir.

Q. I think your testimony was that there was a voucher chargeable to this job on the move-out of that piece of equipment?      A. Yes, sir.

Q. Or the move-in, rather?

A. Yes, sir, there would be.

Q. I think you said there was on the move-in?

A. Yes.

Q. Well, now, is that voucher chargeable to the job that you know of for the \$770.17, which is also charged as a move-out?

A. I would have to do some checking on that.

The Court: I am not sure that I have the item that you are referring to here. [1348]

Mr. Etter: Your Honor, it's on that attached sheet.

The Court: On the attached sheet?

Mr. Etter: Right over at the corner there are two and one is a move-in of \$770.17, and right below it is a move-out.

The Court: Yes, I know.

Mr. Etter: And it has "Estimated" after it.

The Court: I see.

A. No, sir. When that piece of equipment was moved out it was sent out collect; in other words, the other job would have paid for that.

Q. (By Mr. Etter): And it was not charged against your contract?      A. No.

The Court: Let's see, this same piece of equipment, of course, I think the testimony was that it

(Testimony of Ralph Nelson.)

came in there just before the strike and was kept and then sent away right after or toward the end of the strike?

Mr. Etter: That is correct.

The Court: But rental was charged on it on the first page of Exhibit 29, was it not, isn't that the same item, NC-414, Marine Motor Crane?

Mr. Etter: That is correct.

Q. Now, with respect to Item 11, as I understand what you said, there is a mark-up of 15% above the direct cost [1349] for overhead, plus then a 10% mark-up of the direct cost and the 15% as before profit?

A. Yes, sir.

Q. Now, was this contract bid, would you say, with regard to that formula?

A. I didn't assist in the bidding; I assume it would be.

Q. Well, would you know of any other way that it would be bid?

A. No, I don't.

Q. You do not? So that would it be proper to assume, looking at Exhibits 21 and 22, first we will take 21, looking down there at the total estimate of \$908,380, could we reasonably assume that that \$908,000, and \$380,000 was a figure of Morrison-Knudsen Company's which composed the direct cost plus 15% overhead plus 10% of the direct cost and overhead in that total?

A. In that total would be the direct cost plus overhead plus profit; I don't know what the exact figures would be.

Q. In that \$908,000? No, I don't mean the exact



(Testimony of Ralph Nelson.)

figures, but would we be right in assuming that that sum total was a combination of direct cost, overhead and 10% cost under the formula suggested by you?

A. Yes, sir.

Q. And then looking again at 22, Exhibit 22, we find a [1350] figure there of \$868,000; could we reasonably assume, likewise, that that figure in 22 included direct cost, overhead, and 10% profit on the two?

A. Yes, sir.

Q. All right, so that now actually, as you say, the job itself lost, I think your testimony was, about \$322,196, is that correct?

A. Yes, sir.

Q. And although Item 11, which Mr. DeGarmo has handed us, is not in evidence and I don't know whether you have seen it, it indicates a total claim now as far as this litigation is concerned, of about \$182,500 against these defendants. Now, having that in mind, even assuming the \$182,000 was available to the plaintiff or was subtracted, let us put it, from the total of loss, this contract in any event, on the basis of those figures, would have cost about \$142,000, anyway, wouldn't it?

A. Yes, on that basis, yes.

Q. That is right. So that actually, taking this bid of yours, or the bid, not of yours but of the company's, say, as indicated by Exhibits 21 and 22 as including an estimate made by Morrison-Knudsen, experienced contractors, apparently, of direct cost, overhead of 15%, profit of 10%, still lost, excluding the claimed amount against the Unions, about \$140,000? [1351]

(Testimony of Ralph Nelson.)

A. Yes, that is right.

Q. Isn't that correct? A. Yes, sir.

Q. Or, in other words, their bid even with the 15% and the 10% on top of the direct cost, still showed 8% more in loss over and above that, isn't that right? A. That is right.

The Court: We will take a ten minute recess.

Mr. Etter: All right, your Honor.

(Whereupon, a recess was taken for a period of ten minutes.)

Q. (By Mr. Etter): You are aware, are you, Mr. Nelson, that in the bill of particulars, the amended bill of particulars, the loss of profits was claimed as \$64,190, while on this exhibit for identification, which is not yet in evidence, the loss of profit has been reduced to \$16,592?

A. Yes, I saw that on that exhibit.

Q. A reduction of some \$48,000?

A. Yes, sir.

The Court: What exhibit do you have now?

Mr. Etter: Well, I don't think it's in yet.

The Court: I have a copy of it though, probably.

Mr. Carey: It's identified as 49.

Mr. Etter: 49. [1352]

The Court: That item of \$16,592?

Mr. Etter: I was calling Mr. Nelson's attention to the twice amended item, now \$16,592, as compared to \$64,000 that was claimed in the amended bill of particulars.

Q. Now, Mr. Nelson, getting down here to Item

(Testimony of Ralph Nelson.)

16, I would like to inquire about that item, if I may. In speaking here of the 100-F area on the first page, have you that Exhibit 33 or have you a copy of it there?

A. I have a copy of it which I believe is the same.

Q. Here is 33, or you can use this if you wish, it's the same one (hands paper to witness), I believe, is it not?

Mr. DeGarmo: I didn't get the question, Mr. Etter.

Mr. Etter: I haven't asked one yet.

The Court: He handed him Exhibit 33.

Q. (By Mr. Etter): You have that Exhibit 33?

A. Yes, sir.

Q. Now, I notice that you have on the 100-F area labor cost to March 31, 1956, and underneath that 1810 cubic yards poured, is that correct?

A. Yes, sir.

Q. Now, can you tell me whether that is the actual pour or is the amount of pour that was billed to the AEC?

A. That was the amount that the AEC and our engineer established to cover the amount of work that we had in [1353] place under that concrete item.

Q. Yes. In other words, it actually isn't the amount of concrete poured, is it? A. No.

Q. In other words, your books reflect a lesser amount of pour than that?



(Testimony of Ralph Nelson.)

A. As far as my record of the concrete that had been delivered.

Q. In other words, if the forms were in place under the arrangement you can build them as and for concrete poured? A. Yes.

Q. So that this 1810 cubic yards poured actually isn't definitely, I mean, it isn't definite that that amount was poured, actually?

A. No, it hadn't been actually poured.

Q. It hadn't been actually poured, but billed?

A. Yes.

Q. Now, looking down on that same 100-F area "Labor Cost 6/6/56 to 9/30/56, 2253 cubic yards poured." Now, that is, likewise, true is it not, that that amount is the amount billed but wouldn't necessarily have to be the amount poured?

A. At that point it was the amount that had actually been poured. In other words, there had been no forming [1354] ahead of it, so that is the actual amount.

Q. That is an actual amount of pour, is that correct? A. That is right.

The Court: What was that last item referred to?

Mr. Etter: The last item, your Honor, is in the same column referring to the 100-F area.

The Court: 2253, yes, I see.

Mr. Etter: Yes.

The Court: Yes, all right.

Q. (By Mr. Etter): Now, actually, or then looking down there at the 100-H area again, or I mean just below the 100-F area, I refer now to the item

(Testimony of Ralph Nelson.)

which you have of 1440 cubic yards poured, can you tell me whether that amount was poured or is that the amount billed?

A. That was the amount that we were paid for.

Q. That is the amount that you were paid for? Can you tell me actually, as to both those items, what the amount of yards poured was, without too much trouble, Mr. Nelson?

A. The Concrete deliveries up to those points in the 100-F area had been 1619½ cubic yards, and in the 100-H area, 1266 cubic yards.

Q. Thank you. Now, in that exhibit, referring back again to Exhibit 33, you have determined a cost, as I see it there, a labor cost of \$28.41 per cubic yard up until March 31? [1355]

A. Yes, sir.

Q. Under the formula that you explained to us?

A. Yes, sir.

Q. Now, when this contract was bid there would be a bid estimate, wouldn't there, of the expected or probable, possible, whatever it might be, cost per cubic yard for pouring?

A. Yes, our engineers would have.

Q. Have you that record; can you tell me what the bid estimate per cubic yard was with respect to the 100-F area and particularly with respect to the yards poured prior to March 31?

A. Well, I have a document here, I don't know how right it is, but for the 100-F there was 3456 cubic yards.

Q. Yes, all right. I want to know what the estimated cost was going to be per yard?

(Testimony of Ralph Nelson.)

A. The estimated labor cost?

Q. Yes, the estimated labor cost that you have here as being the actual cost, what was the estimated labor cost for the 100-F area?

A. \$19.55 a cubic yard.

Q. Beg your pardon?

A. \$19.55 a cubic yard.

Q. \$19.55 a cubic yard? A. Yes. [1356]

Q. So the estimate on which this bid was made was about nine dollars short of the actual cost, was it not, on concrete poured to March 31?

A. Yes, that is right.

Q. In other words, nine dollars short?

A. Yes, sir.

Q. And that \$19.00, if I understand your formula correctly, also included direct cost, overhead plus ten per cent profit?

A. No, this \$19.55 only included our direct labor cost with payroll taxes and insurance figured in.

Q. And that \$19.00 does not include, then, an additional 25%? A. No, sir.

Q. If it did it would be approximately, as I see it, approximately a fourth more, and would be, if you included overhead and profit, would be \$25.00 rather than \$19.00? A. Yes, that sounds right.

Q. And that still would be \$3.41 under the actual cost of pouring, isn't that right?

A. Yes, that is right.

Q. That is right; in the 100-H area will you tell me what your estimated cost of material per cubic



(Testimony of Ralph Nelson.)

yard is indicated in the bid estimate as to yards in that area? [1357]

A. You mean, the labor costs again?

Q. Yes, the labor cost. A. \$21.19.

Q. \$21.19? So the cost as shown here, \$20.91, was less the actual cost up to March, wasn't it?

A. Yes.

Q. All right. Now, going back again to the 100-F area, although the cost of the cubic yards poured was about eight dollars in excess of the yards poured, eight dollars per yard in excess labor cost than that in the 100-H area up to March 31, you see that, do you not? A. Yes.

Q. The ultimate cost or, rather, the cost in the 100-F area from 6/6/56 to 9/30/56 was \$39.71 per cubic yard, was it not? A. Yes, sir.

Q. While the cost in the H area, the 100-H area, from 6/6/56 to 9/30/56 was \$42.92 per cubic yard labor cost? A. Yes, sir.

Q. So, where the original labor cost per cubic yard in the 100-F area was some eight dollars in excess of the original cost per cubic yard of the concrete pour in the 100-H area prior to March 31, the excess in the 100-F area occasioned by the labor cost from 6/6/56 to 9/30/56 was considerably less than the excess cost for the same [1358] period in the 100-H area? A. Yes, that is right.

Q. So, where the cost was low in the 100-H area, it more than doubled, did it not?

A. Yes, that is right.

Q. In other words, where what apparently was

(Testimony of Ralph Nelson.)

the most efficient pour up to March 31 became the less efficient?      A. That is right.

Q. Isn't that right?      A. Yes, sir.

Q. Can you explain that to me?

A. I can give an explanation but, I mean, it is not ordinarily my job, this is the way it turned out.

Q. That is the way it turned out?      A. Yes.

Q. I see. Now, 21 and 22 are those exhibits, do you have those?

The Clerk: He does.

Q. (By Mr. Etter): Oh, yes, here we are. Now, calling your attention to 21, this is a projection chart, is it not?

A. Yes, it's a construction status chart.

Q. A construction status chart? Now, looking at the third item which appears to the left under the designation of "component" do you see that "concrete"?      A. Yes. [1359]

Q. "Estimated Cost, \$165,000," do you follow me out here?      A. Yes.

Q. All right. Now, carrying that over to the end of March am I correct in assuming that the projection contemplated 80% completion of the concrete pour at the end of March?

A. Yes, I believe that is what it is.

Q. Isn't that right?      A. Yes.

Q. And that is what the engineer estimated that there would be, 80% of that concrete in F area poured by the end of March, correct?      A. Yes.

(Testimony of Ralph Nelson.)

Q. As a matter of fact, what percentage was poured by the end of March?

A. I don't have that information.

Q. Well, it wasn't anywhere near 80%, was it?

A. No, it wasn't that high.

Q. Beg your pardon?

A. It wasn't that high.

Q. What was it, about a third, if you can tell me?

A. (Witness refers to file): I can't give you that information. It would take some figuring. In other words, anything I have here is not figured in that manner.

Q. I see. So you couldn't tell me how close they were to this projection? You do know definitely it wasn't any [1360] 80%, isn't that right?

A. Yes, it wasn't 80%.

Q. Now, taking the other one, the 100-H area, and looking at the third item down, which is, "Concrete," do you notice that?

A. Yes.

Q. And extending it out \$164,000, now, if I am correct the projection there indicates that at the end of March 50% of that concrete should have been poured?

A. That is what the chart says.

Q. That is right. As a matter of fact, 50% of it was not poured at the end of March, was it?

A. I don't believe it was.

Q. I beg your pardon?

A. I don't believe it was 50%, no.

Q. I see. So that, actually, Morrison-Knudsen through no act of these defendants, missed completely the projection chart which appears as to the



(Testimony of Ralph Nelson.)

completion of concrete pouring in both of these areas, isn't that correct?

Mr. DeGarmo: I will submit the witness is not the one to answer that question. He is a bookkeeper and if he can answer that he is better than a bookkeeper.

Mr. Etter: I thought he was doing some accounting.

Mr. DeGarmo: Well, you asked him a question that I don't think he is competent to answer. If you will read the [1361] question, I think it's obvious.

Mr. Etter: Well, let's rephrase it a minute.

The Court: Well, all right. I think what you asked appears in the chart here. What the explanation may be is a different matter, but it appears on here to me, at any rate.

Q. (By Mr. Etter): Yes; is there any way that here, possibly by tomorrow, so that we can move along, that you can determine what the percentage of pour was as to each of the projects at the end of March? A. I would imagine so.

Q. I beg your pardon? Would you try and figure that out for me; you know what I want, don't you?

A. I believe so, yes.

Q. In other words, to explain it, 21 and 22 indicate first as to the one area, that 80%, this projection contemplated that 80% of the concrete provided there would be completed by the end of March and the other that 50% in the H area, and I should like to know of the total amount of pour, that is, of the bid amount upon which these were based, of

(Testimony of Ralph Nelson.)

the bid amount, how much actually of the entire bid amount was poured?

A. I don't quite understand what you mean by "bid amount"? There was no bid amount, this was a lump sum.

Q. Well, yes, but didn't the cost estimate indicate a [1362] prospective number of yards that would have to be poured?

A. I would assume that somebody had done some figuring.

Q. Well, have you that available or can you make it available?

A. Well, I gave you a figure but I don't know whether that was the actual figure.

Q. I see, could you find out, do you think? Is it possible that somebody has that information, counsel?

Mr. DeGarmo: Well, I am sure we have it. Do you want him to figure it or do you want me to furnish it?

Mr. Etter: No; I was inquiring whether they had and he indicated he might not be able to, and I was just inquiring whether you had that information.

Mr. DeGarmo: I think, and I say "I think" that we can tell you what percentage of the originally estimated concrete was poured as of March 30, '56. If we can do so, we will, although I think it's entirely immaterial, but we will accommodate you in every way we can.

(Testimony of Ralph Nelson.)

The Court: Will you have that in the morning, then?

Mr. DeGarmo: We will do our best.

Q. (By Mr. Etter): Fine. Now, turning over to the second page of this Exhibit 33, as to the 100-F area you have an estimated cost per cubic yard of \$6.10 material cost? [1363]

A. "Supply cost" is the word used.

Q. Supply cost? That supply cost, does that include the items listed in the 100-F area, that is, rental, supplies, prefabrications, scaffolding, and all that sort of thing? A. Yes.

Q. And includes, also, does it, the cost of the concrete?

A. No; it does not include the cost of the concrete.

Q. In other words, the estimated cost per cubic yard is \$6.10, which is derived from the items which I have read to you, uniform rentals, supplies, lumber, scaffolding, miscellaneous small tools, and so on?

A. \$6.10 was the estimated cost of those items.

Q. \$6.10 per cubic yard was the estimated cost of those items, is that right? A. Yes, sir.

Q. Now, can you tell me what the actual cost per cubic yard of those items was as to concrete poured up until March 31?

A. I could by doing a little mathematical computation.

Q. All right, will you try and do that by tomorrow? A. Yes.



(Testimony of Ralph Nelson.)

Q. All right, and looking again at the 100-H area, you have a total estimated cost per yard which, I assume, is derived from the same basis and formula as that in the [1364] 100-F area?

A. Yes.

Q. Of \$6.49? A. Yes.

Q. Would you determine for me, if you can, before tomorrow, that is the estimated cost, would you determine if you could, the actual cost of the item of concrete poured, that is until March 31?

A. I can give you a figure of what was on the books, what we had paid for that material. It wouldn't be an accurate cost per cubic yard, there is so much of this material that has a number of reuses.

Q. Yes.

A. So that actually that figure would not be accurate.

Q. Well, then, of course, this estimate is important to us, as you can understand, because it is the difference of several thousand dollars. Are you saying now that your estimate is just an estimate and really has no basic justification?

A. No; I am saying that as far as at the period March 31 we would have a number of items, for instance, lumber——

Q. Yes.

A. (Continuing): ——that we had paid for and that were in our job cost, but we used that same lumber later on.

Q. At less cost? [1365]

A. It would have the effect, yes, of reducing the

(Testimony of Ralph Nelson.)

cost per yard at that time. It would show a fairly high figure.

Q. Is this estimated cost per cubic yard \$6.10 and \$6.49, were those estimated bid figures along with the other estimated bid figures that made up this contract? A. Yes.

Q. They were? A. Yes, sir.

Q. And were they as close to being accurate as some of them have proved to be here?

Mr. DeGarmo: Well, now, I object to that question on the ground it's argument.

The Court: Yes; I will sustain the objection.

Q. (By Mr. Etter): Well, it is, as you say, however, just an estimate. Now, you are telling me you can't actually break down and tell me what the cost of a cubic yard was up until March 31 before this strike?

A. No; I said that you can't make an accurate computation until you have used all of this material over and over again.

Q. Well, is there any way here that you can make an accurate computation of what the actual cost should have been, excluding strike costs?

A. I don't quite understand what you [1366] mean?

Q. Well, you have a total actual cost of \$38,557.01, isn't that right? A. That is right.

Q. And, as I understand, that includes items of cost which are chargeable or alleged to be chargeable to the strike of the Engineers and Teamsters?

A. Yes; that would be right.

(Testimony of Ralph Nelson.)

Q. Is that right?           A. Yes.

Q. Well, can't you tell me what the actual cost of any of these items might have been for four months during your operation when there wasn't any strike?

A. I could give you a figure but we would have used a lot of this material later on.

Q. Well, then, how can you determine what cost is attributable or what loss is attributable to the Engineers and the Teamsters, and what may be merely depreciation or really a lack or a reduction in charge, let's put it that way, for these various items; how can you tell which is which?

Mr. DeGarmo: Well, now, if your Honor please, the witness has answered this question. I asked him specifically so as to cover this type of examination if it was possible to determine at a particular date what your average cost per yard was for materials, and he said "no." He has [1367] told counsel now at least three times, to my certain knowledge, that it is not, and he has said why, because some of this material is used over and over again and you can't tell until you get to the end of the job how many times you have used it, and, therefore, what your cost is, I submit that is material and the witness has made answers repeatedly.

Mr. Etter: Well, I may say here counsel here has a chart in which he says that the excess cost due to this strike is \$13,000 in one instance, and nearly \$9,000—in other words, he comes in and says that we omitted \$22,000 on this particular item,



(Testimony of Ralph Nelson.)

and he says the reason that we owe it to them is because they made an estimate of ten cents, \$6.10, and \$6.49, and we are bound in accepting their estimate; just to take all of these figures of cost, subtract their estimate with the estimate of cost and charge us with the excess, that is what he wants to do here.

Now, I certainly have a right to inquire whether his estimate of \$6.10 and \$6.49 is any better than some of the others.

Mr. DeGarmo: If that is what you want, I am in entire agreement with you. I do not claim that either you or the Court is bound by our estimate of cost. I will have figures on that.

Mr. Etter: Are you going to certify as to this estimate or are you going to leave this in your contract as to [1368] performance?

The Court: I haven't considered this is binding, it's for the Court to decide.

Mr. Etter: I have a right to inquire as to whether he can give me the actual cost of this item prior to the strike. For instance, say the actual cost of this item prior to the strike was eight or nine dollars per cubic yard and some three or four dollars more, the rest of it, it would make an awful difference what we were responsible for.

Mr. DeGarmo: The witness has stated once on direct examination, and he has stated three times on cross-examination that it is not practicable or possible to give you a cubic yard cost, he can give you the cost which is on the books to any date, and

(Testimony of Ralph Nelson.)

he will be glad to do that, but if you ask him to give you a cubic yard cost, he cannot because it isn't possible to do it.

The Court: Well, that is true, that is the answer, anyway.

Mr. Etter: Then what you are saying here is that, all you are doing here is making an estimate?

Mr. DeGarmo: No; I am not stating any such a thing nor has the witness. These records are comparable to the books of the company, you can verify them, I don't know whether you have verified them.

Mr. Etter: That is the estimated cost? [1369]

Mr. DeGarmo: That is the estimated cost, yes, and that is not what you are asking this witness about.

The Court: Let me ask you this, this Exhibit 33, I am not sure that I understand just the basis of this here.

Mr. Etter: For instance, your Honor, all I am trying to do, here are two exhibits, 21 and 22.

The Court: Pardon me, just a moment.

Mr. Etter: Yes.

The Court: Your total actual cost here is over the whole life of the job, isn't it?

Mr. DeGarmo: That is correct.

The Court: For instance, you say that the scaffolding, materials, and so forth, amounted to twenty-four forty-four fifty-three, that and your small tools, and so forth, that was over the whole life of the job?

Mr. DeGarmo: That is correct.

(Testimony of Ralph Nelson.)

The Court: And then you prorate it here as you have done in this, and the witness says that he can't do that for a particular piece because he doesn't know how much material was used over again or to what extent?

A. Yes.

The Court: All right, go ahead. I think I can understand that. The Court will pay very close attention to your arguments, both sides, at the end of the evidence without previewing them on the witnesses, if I may put it [1370] that way.

Mr. Etter: Well, as long as the witness' answer is that he doesn't know and he can't tell, I won't examine further.

The Court: Well, that is what he said.

Mr. Etter: All right, you may inquire.

The Court: Mr. Carey? [1371]

### Cross-Examination

By Mr. Carey:

\* \* \*

Mr. Carey: I now ask to be marked for identification a photostatic copy of a letter on the letterhead of Allen, DeGarmo and Leedy, dated April 27, 1956, signed by [1373] Mr. DeGarmo and addressed to the International Union of Operating Engineers, Washington, D. C., or addressed to the Teamsters Local 839 and the Engineers Local 370, the defendants in this case, and with at the end a notation that copies had also been sent to the Union, the International Union of the Engineers and Joint



(Testimony of Ralph Nelson.)

Council of Teamsters in the Washington Conference. I would like to have you mark it for identification.

The Clerk: Marked Defendant Teamsters No. 50.

The Court: What was the number?

The Clerk: 5-0; fifty.

Mr. Carey: Fifty.

Q. I think you have already answered you were not at all familiar with that letter, or are you?

A. I may have seen a copy of this letter.

Q. Well, do you know whether you had or not?

Mr. DeGarmo: If you want to offer it, Mr. Carey, I have no objection. You don't need to identify it further, as far as I am concerned.

The Court: Do you wish to offer it?

Mr. Carey: Yes.

The Court: All right, it will be admitted.

(Whereupon, said document was admitted in evidence as Defendants' Exhibit No. 50.) [1374]

\* \* \*

Q. You referred at the instance of Mr. DeGarmo to Exhibits 34 and 35, those being these two, what we might call rental schedules of the AGC and that other organization, do you remember that?

A. Yes, sir.

Q. Now, Morrison-Knudsen has its own rental schedule, hasn't it? A. Yes; they do.

Q. So long as you have been with Morrison-Knudsen in figuring up any of their jobs you have never, or you have always applied Morrison-Knud-

(Testimony of Ralph Nelson.)

sen's own schedule and have never applied either of these other two to actual accounting on the job, have you?

A. Yes; I have. I have billed other firms at these rates.

Q. No; I am not asking that; that isn't the question. I am not asking about Morrison-Knudsen's job; Morrison-Knudsen apply uniformly their own rental schedule, [1377] don't they?

A. To their own equipment, yes.

Q. Yes, and that is what you did on this job?

A. Yes.

Q. Now, if in this instance you would apply the Morrison-Knudsen rental rates rather than the AGC and this AED rates, the charge for rental equipment instead of being as you now claim about \$29,000, would be about \$9,100, wouldn't it?

A. I haven't done that.

Q. What?

A. I haven't done that in this Union.

Q. I know you haven't, but I say if you had done it, the actual amount that the Boise office charged to this job was not \$29,000, but about \$9,100, isn't that right?

A. Well, I am not sure of the \$9,100, I haven't verified that figure.

Q. Well, can you verify it by morning?

A. Yes, I could. [1378]

(Testimony of Ralph Nelson.)

Redirect Examination

By Mr. DeGarmo?

Q. Well, Mr. Nelson, will you refer to Plaintiff's Exhibit 29, do you have that in front of you?

A. What is the item number?

Q. Yes, you have it here. A. Oh, yes.

Q. I don't mean to contradict you, but maybe I know more about your records than you do. There is one item on here counsel asked you if there was any item on this exhibit in which you actually had paid the AED rental which is shown here.

The Court: You are referring to 29?

Mr. DeGarmo: 29.

The Court: Yes, all right.

Q. (By Mr. DeGarmo): I call your attention to an item listed here, well, it's about, well, it is just after [1380] the automotive equipment at the top of the page, "125 EFM Ingersoll-Rand Gyro Compressor," listed at \$198 a month. Now, can you check your records and tell the Court whether you actually rented that vehicle?

A. This specific one here was actually our own. Later on we rented two from Inter-Mountain Equipment Company at AED rentals, but this specific one here was ours.

Q. Did you rent an identical piece of equipment? A. Yes; 125 Ingersoll-Rand.

Q. And what did you pay for them?

A. AED rates.



(Testimony of Ralph Nelson.)

Q. Was that \$198 a month?

A. I believe that is the figure. I would have to accurately check the invoice.

Q. Now, while we are on this exhibit, Mr. Nelson, do you have a company manual there?

A. Yes.

Q. Will you take out of that the sheet which relates to this controversial company rental, the explanatory sheet that explains what you do and what you are charging and who you are charging and for what? What is this document that you are removing the sheets from, Mr. Nelson?

A. This is the equipment management procedure that is Morrison-Knudsen Company's administrative bulletin, point 151. [1381]

Q. You didn't listen to the question that I asked you. I asked you what was the document from which you are removing sheets?

A. Oh, that is our administrative bulletin.

Q. And what is that volume? What relationship does it have to accounting practices within the company?

A. This deals with the equipment procedures.

Q. Well, does the entire volume deal with equipment procedures or only the sheets that you hold in your hand?

A. The two sheets that I hold in my hand.

Q. And the question that I asked you was, does the volume which you have in front of you, what does it deal in from an accounting standpoint?

A. All phases of company administration.

(Testimony of Ralph Nelson.)

Q. Is that the volume which determines the accounting procedures for the entire organization?

A. Yes; that plus, we have another accounting procedure with us.

Q. Now, you have withdrawn from this document three pages. Will you please mark these as an exhibit?

The Clerk: Plaintiff's 51.

(Whereupon, Plaintiff's Exhibit No. 51 was marked for identification.)

Q. (By Mr. DeGarmo): I am handing you now, Mr. Nelson, that which has been marked as Plaintiff's Exhibit 51 for [1382] identification, will you state now for the record what that exhibit for identification is?

A. Administrative Bulletin No. 5.1, "Equipment Management Procedure," and Administrative Bulletin No. 5.2, "Equipment Accounting."

Q. Will you state, Mr. Nelson, whether those are the administrative documents which determine the basis for rental charge of equipment and which did determine the basis for rental charge of equipment during the project at the Hanford Works?

A. Yes, sir.

Mr. DeGarmo: Counsel has not had an opportunity to examine this.

The Court: Show it to counsel.

(Document handed to counsel Etter.)

(Testimony of Ralph Nelson.)

The Court: Do you want to look at this, Mr. Carey?

Mr. Carey: No.

Mr. DeGarmo: I will endeavor if I may withdraw this this evening, to have photostatic copies of it made so that counsel and the Court may have it.

Mr. Carey: I don't care about the accounting charge of that, what I would like to know is the actual charge they made.

Mr. Etter: I think, as your Honor indicated, they ought to move along. I am not interested in this accounting [1383] procedure. I think that what we are interested in is what they have charged to this job.

Mr. DeGarmo: I am interested in the basis of the charge, too.

Mr. Etter: Well, we are prepared to admit a certain amount of what they charged and how they computed it. What difference to them does it make if we admit it?

Mr. DeGarmo: It makes a lot of difference, I think the Court will observe it as we go along here.

The Court: I think, as I understand it, they are going to bring in the actual figures. I will admit this as showing the basis for it. I assume that the witness will testify that the computation was actually made in accordance with the bulletin?

Mr. DeGarmo: Yes, and there will be further testimony.



(Testimony of Ralph Nelson.)

Mr. Etter: Well, if the amount is made in accord with those procedures, we will admit that that is how it is made and we won't need the further testimony.

Mr. DeGarmo: You may after you read this, Mr. Etter, and I think you will get a surprise.

Mr. Etter: I doubt that their accounting procedures can do any damage.

The Court: At any rate, let's see, it will be admitted as Exhibit 51. [1384]

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 51.)

Q. (By Mr. DeGarmo): In connection with the charge which appeared upon the project records for equipment on this job, will you state whether that charge was made pursuant to the directives as contained in the bulletin which you have in front of you as, I believe, Plaintiff's Exhibit 51?

Mr. Carey: Well, your Honor, if he doesn't know what the charge is, how can he know whether it is made in conformity with that formula or not?

The Court: He was the bookkeeper on this. Did you do the computing yourself?

A. Yes.

The Court: I think he can tell, and then bring in the figures later.

Q. (By Mr. DeGarmo): Do you understand the question?

A. Yes; it was in accordance with this.

Q. Now, while the figures will not be completely

(Testimony of Ralph Nelson.)

available now, can you tell us whether any charge was made to this project for any equipment during the strike period?

A. As far as our books are concerned, he made a charge for several pickups and the station wagon.

Q. Yes; is that all? A. Yes. [1385]

Q. I call your attention, Mr. Nelson, who determines whether a charge is made to the project or not? A. The district manager.

Q. That is not, then, determined by the Boise office or by your own job? A. No, sir.

Q. And in this case was there a charge made during the strike period for the equipment other than the equipment actually in use, the pickups?

A. No; there was none.

Q. So that all the strike period you had no charge, inter-company charge, for this equipment as listed on Plaintiff's Exhibit 29, other than the pickups? A. That is right.

Q. And I call your attention to this portion of the equipment procedure, "Items of minor equipment such as powered hand tools, minor construction equipment not included in the list of major equipment, office equipment and furniture, mess equipment, and so forth, are to be paid for by the job purchasing them and are to be charged into the job costs. No salvage will accrue to the job upon transfer of such items to another job or to a district warehouse except that all items' cost in excess of \$100 will arbitrarily carry a salvage value of \$10.00,

(Testimony of Ralph Nelson.)

except engineering equipment as [1386] covered in administrative bulletin No. 5.9."

Now, was that same procedure followed on this project? A. That is right, yes.

Q. Well, then, what would occur when you would get these items of minor equipment, what charge would appear on your records from the company charge?

A. If we got it from the company warehouse there may be some repair item that would be charged out, plus whatever salvage value it carried.

Q. And would that have any reference to its actual value? A. No; it would not.

Q. And it would not be a rental charge?

A. No, sir.

The Court: What amount would you charge if you got it from a company warehouse, did you say?

A. Well, it would depend on how it had been carried.

The Court: Supposing it was a hand power saw that cost \$150, that is, retail; what would you put down on your books?

A. Well, it would probably come in with a salvage value of \$10.00.

The Court: Yes, but what would you charge against the job?

A. If it is merely salvage I wouldn't charge anything against the job. [1387]

The Court: No; I am not talking about salvage. Suppose these hand tools had come in new to you,



(Testimony of Ralph Nelson.)

assigned to the job, small tools; what do you put down to charge against the project?

A. Your small tools, anything under, say, \$100, like I said there, would all be written off against the job.

The Court: Well, what would the "all" be in a particular instance in dollars and cents? I don't know, it's getting late in the afternoon, maybe I am getting fuzzy, but when you get a small tool in you charge the whole thing against the job, don't you?

A. That is right.

The Court: All right. Supposing you get a particular one in, what would you put down in dollars and cents as a charge against the project?

A. Whatever the invoice was.

The Court: What is the basis of the invoice?

A. Whatever the firm charges we are buying it from.

The Court: Oh, well, the retail cost of it, then? I thought you said something about getting it out of a company warehouse?

A. Yes.

The Court: You are talking now about something that has been used on another job?

A. Yes. [1388]

The Court: Yes, and you are talking now about the salvage value?

A. Unless there has been some repair.

Q. (By Mr. DeGarmo): If you got equipment

(Testimony of Ralph Nelson.)

from another job it would be on your books at \$10.00?      A. Yes.

Q. Then if you had to spend money to make it usable, that would be a cost?      A. Yes.

Q. It wouldn't appear on your books at more than \$10.00?      A. Yes.

The Court: I understand it now.

Q. (By Mr. DeGarmo): Regardless of its value?      A. Yes.

Q. Or how much use of it, and if you took it off the job at the end of the job, it would go off, too?

A. Yes.

Q. You would have a \$10.00 entry on and a \$10.00 entry off?      A. Yes.

Q. That is all. Now these amounts which are shown as company rental amounts, for what use are those made, or what use is made of those amounts other than internal bookkeeping purposes (shows paper to witness)?      A. No other use. [1389]

Q. Do you rent equipment to anybody else at those prices?      A. No.

Q. Do you rent equipment from anybody at those prices?      A. No.

The Court: Well, they are a part of your cost accounting on the job, aren't they?

A. Yes.

The Court: Do you use them for income tax purposes?

A. No; inter-company equipment rental; it's a charge to the job.

The Court: As to the particular job? You

(Testimony of Ralph Nelson.)

wouldn't take these into account, these rentals, as a part of the cost?

A. Yes; they are an expense to the job, but they are a credit to the equipment pool. One offsets the other.

The Court: Oh, I see. It is just an accounting entry, a bookkeeping entry?

A. Yes.

The Court: I think that Morrison-Knudsen, like everybody else, keeps books to see whether they are losing money or making money on a particular job?

A. Yes.

The Court: And you use this system to tell whether you are losing money on a particular job?

A. Yes.

The Court: And you have got to know what the [1390] equipment cost you?

A. I know what the job cost. What the actual cost to the company is, I don't know, I don't have access to the company books.

The Court: Do you have some other method if you want to determine now on the Hanford job, "What did we do here?" You tell me that, "We just lost so much money on this job." In computing that you must have some figure that you put in for the cost to you of the equipment that you used on that job, don't you?

A. Yes.

The Court: And do you have any other method besides this one of company cost accounting to determine that?



(Testimony of Ralph Nelson.)

A. No; that is what is used.

The Court: I see; all right.

Q. (By Mr. DeGarmo): But that cost which goes on the books is only such as is billed from the district office to that job for equipment?

A. Yes.

Q. Now, does the district office maintain an equipment pool that it accounts to for profit and loss on equipment? A. Yes; they would.

Q. Now, you have available in your records the charge which appears during the strike period, that would be [1391] from March 22 to June 6 of 1956, do you not? A. Yes, sir.

Q. And you are going to produce that charge and also what the charge was as of the end of March, 1956, I think that is what they asked for?

A. Yes.

Q. Mr. Nelson, you have testified in response to a question from Mr. Etter that the loss on this job was \$322,196 and some odd cents, I didn't take down the odd cents? A. Yes, sir.

Q. Will you state if there is pending a claim on this job?

A. Yes; we have a claim into the Atomic Energy Commission.

Q. Well, now, when you stated in answer to counsel's question that the loss was that amount, did that take into account this claim?

A. No; I was merely making a mathematical computation.

Q. Well, when you closed out your books on this

(Testimony of Ralph Nelson.)

project as of December 31, 1956, is there a reference to a claim which is pending?

A. Yes; there is.

Q. What is the basis of that claim, Mr. Nelson, and what is the amount of it?

A. At the time this job was bid there was some confusion between our estimating department and one of the subcontractors. [1392] This subcontractor had submitted a price, a verbal quotation, to Morrison-Knudsen Company to do the mechanical work or referred to a certain division in the specifications covering installation of the pumping equipment. The estimating department assumed that inasmuch as he said he was going to do this work under this division, that it included all the cost, the cost of the millwrights, pipefitters, or whoever else it took to do that work. At the time the subcontracts were being written up and when this University Plumbing and Heating confirmed their quotation in writing, they denied that they had quoted for the millwrights' portion of the work.

Q. Well, I asked you the question, what is the amount of the claim and where is it pending?

A. It is \$120——

Q. If you have the amount of it, let's have it exact.

A. \$127,483.55.

Q. And is that a pending claim, and with whom?

A. With the Atomic Energy Commission.

Q. Has it been determined as yet?

A. No, sir; it has not.

(Testimony of Ralph Nelson.)

Q. I want to again, Mr. Nelson, come back to Plaintiff's Exhibit 29.

The Clerk: Here it is, sir. [1393]

Q. (By Mr. DeGarmo): And see if we can clarify one item here. By the way, Morrison-Knudsen Company is not just one project, is it, Mr. Nelson? A. No, sir.

Q. And when you take money out of one project and put it in another, both entries affect Morrison-Knudsen Company, do they not, as an entity?

A. Yes, sir.

Q. Well, now, this particular piece of equipment that is referred to here as an MC-414 Lorrain motor crane, was it the same motor crane that was brought in and moved out that this move-in and move-out charge which has been discussed refers to?

A. Well, the motor crane that came in that was used after the strike was not this same crane.

Q. Well, you did have one come in during the strike, though?

A. One had come in at the beginning of the strike, this Lorrain, and then it had been moved out to Estacada.

Q. All right. And then did you bring another one in order to perform this work?

A. Yes; a Northwest motor crane was brought in from Klamath Falls, Oregon.

Q. And was there a move-in cost on that, too?

A. Yes, sir.

Q. When the motor crane went out to Estacada, the one that [1394] had been brought from Estacada



(Testimony of Ralph Nelson.)

and was sent back to Estacada, the move-out cost of that crane I think you have testified was charged to Estacada?      A. Yes.

Q. Was that a Morrison-Knudsen project?

A. Yes; it was.

Q. So it increased the cost of that project by the amount of the move-out cost, did it not?

A. Yes; it would.

The Court: I must be confused here, I thought that this MC-414 Lorrain crane was charged, both the move-in and move-out cost, was charged to the job?

Mr. DeGarmo: Now, the testimony was that the move-in cost was charged as an item, but as a move-out charge it was charged to the Estacada project.

The Court: Oh, I see, on your internal book-keeping?

Mr. DeGarmo: We paid for both coming in and going out, it happened to be a different project that paid for it. It was paid for by Morrison-Knudsen Company; Morrison-Knudsen Company is not a project.

The Court: It's an institution, we hope.

Q. (By Mr. DeGarmo): Mr. Nelson, when the equipment is rented, do you pay rental only on the equipment while in use or do you pay rental from the time received or to the time delivered [1395] back?      A. You are referring to?

Q. Equipment which is rented to an outsider.

A. An outsider, from the time it leaves their plant until it is returned.

(Testimony of Ralph Nelson.)

Q. And is that regardless of whether it is used during that interim period? A. Yes.

Mr. DeGarmo: I think those are the only questions that I have of this witness.

The Court: All right, Mr. Etter.

### Recross-Examination

By Mr. Etter:

Q. One question: On this move-in and move-out of the Lorrain crane, you testified on my examination that the cost of the move-out was charged to the Estacada, what is that again?

A. It was charged to the contract at Estacada, Oregon.

Q. Estacada, Oregon? Now, apparently are you testifying, or is counsel telling us that they are charging it again back here to the Morrison-Knudsen job at Richland?

A. No; I didn't interpret his statement that way.

Q. Well, can you tell me whether they are charging it against Estacada, Oregon, and also charging it here in this lawsuit?

Mr. DeGarmo: The answer is "yes." [1396]

The Court: I think what they say now is as far as their internal bookkeeping is concerned, they charged it to the Estacada project, and also they are charging it in this lawsuit.

Mr. Etter: Counsel, in answer to my question, said they are charged to both of them.

The Court: I think we can start another witness. We will quit at 4:30.

Mr. DeGarmo: I think I can put on another witness.

(Witness excused.)

Mr. DeGarmo: Mr. Finlay, will you come forward and be sworn?

J. P. FINLAY

called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. DeGarmo:

Q. Will you state your name, please?

A. J. P. Finlay.

Q. Where do you reside, Mr. Finlay?

A. In Spokane.

Q. And what is your business or occupation?

A. I am sales manager for the Inter-Mountain Equipment Company here in Spokane.

Q. Will you state what is the business of Inter-Mountain [1397] Equipment Company?

A. Well, we deal in construction, mining and logging equipment, selling new equipment and, in some cases, renting certain types of equipment.

Q. Will you tell us, Mr. Finlay, what is the area of operation of the Inter-Mountain Equipment Company?

A. Well, it's basically thirteen counties in Washington, the Panhandle of Idaho and two counties in Oregon, and there have been times where we go beyond those boundaries in certain instances, but



(Testimony of J. P. Finlay.)

our franchised area for the Spokane Branch are those just mentioned.

Q. Now, you have stated that you deal, among others, in construction equipment. Is that the type of equipment which is used by what we would term heavy construction contractors?

A. That is right.

Q. And as a part of your business do you rent heavy construction equipment?

A. Yes; I will have to break that down. There are certain kinds of equipment that we don't rent. To name one, a tractor, for instance; we don't rent a tractor primarily because it takes too much abuse and you never can get a value received for it; compressors, cranes, shovels, equipment of that type, we do rent.

Q. And when you rent equipment, Mr. Finlay, is there some [1398] standard guide in the construction industry and in the equipment rental industry for the determination of rental price?

A. Yes; we use what we term the Association of Equipment Distributors Guide. It's put out, oh, normally, every two years. Occasionally they slip another one in, but that is a guide and it is adhered to pretty closely.

Q. Is that what is normally referred to in the construction industry and in the equipment industry as AED rental?

A. That is right.

Q. Will you state, Mr. Finlay, to what degree that rental guide is used in the construction, the heavy construction rental business?

(Testimony of J. P. Finlay.)

A. Well, I think it's pretty much of a basis world-wide, not only in this country, but I have requests from overseas jobs referring to this AED as a guide, so you might say it's world-wide.

Q. Well, now, when you say it's used as a guide, does that mean that you do not use the precise dollar rental to the dollar and cents?

A. Not exactly; sometimes we do, sometimes we go maybe a dollar or ten dollars above; sometimes we may go a dollar or five dollars lower, but it is within a range of a very few per cent.

Q. Will you tell us, I want to bring out one thing, is there [1399] a relationship between Inter-Mountain Equipment Company and Morrison-Knudsen Company?

A. Yes, sir; there is.

Q. Will you tell us what the relationship is?

A. They own, Mr. and Mrs. Morrison, own the controlling interest of our firm.

Q. That is Mr. Harry Morrison?

A. Yes, and Mrs. Morrison.

Q. She is now deceased? A. Yes.

Q. His wife is now deceased?

A. Yes; the estate.

Q. So that it is, in effect, a related organization?

A. That is right.

Q. And who is the general manager for that company?

A. Our general manager is Mr. P. A. Dufford. He is our general manager and vice-president.

Q. How long, Mr. Finlay, have you been in the

(Testimony of J. P. Finlay.)

business of construction and mining and other types of heavy machinery?

A. Approximately 25 years.

Q. And how long have you been associated with the Inter-Mountain Equipment Company?

A. Since 1945, January 1st, 1945.

Q. What association did you have with the Inter-Mountain [1400] prior to that time?

A. Before being absorbed by Inter-Mountain, I was part of Howard Cooper, which is another distributing firm now mainly on the coast, but they sold their branch here to Inter-Mountain.

Mr. DeGarmo: You may cross-examine.

Mr. Etter: No questions.

Mr. Carey: I haven't any.

Mr. DeGarmo: That is all, Mr. Finlay.

The Court: The court will adjourn then until tomorrow morning at 10:00 o'clock.

(Whereupon, court was adjourned until 10:00 o'clock a.m., on February 26, 1958.) [1401]

Wednesday, February 26, 1958—10:00 o'Clock A.M.

(The trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit.)

Mr. DeGarmo: Mr. Reed, will you take the stand, please?



## RAMON E. REED

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

## Direct Examination

By Mr. DeGarmo:

Q. Yesterday, Mr. Reed, during the examination and cross-examination of Mr. Nelson, a request was made that we produce and testify as to the percentage of the estimated amount of concrete which had been poured as of March 31, 1956. Did you make a determination as to that fact last evening? A. Yes, sir.

Q. Will you state what that percentage was, first, as applies to the F area and referring to Plaintiff's Exhibit 21, I believe, if I can have 21 and 22?

The Court: March 31, 1956, it was? [1402]

Mr. DeGarmo: Yes; that is correct.

The Court: What is this area now you are giving?

A. The 100-F area.

The Court: All right.

A. 47%.

Q. (By Mr. DeGarmo): That is 47% of the estimated concrete item? A. Concrete item.

Q. And what was the percentage of the H area as of the same date? A. 41.1%.

Q. Now, Mr. Reed, in the question which was asked respecting this item, there were included ten days of the period of the strike, was there not?

A. Yes, sir.

(Testimony of Ramon E. Reed.)

Q. And if we take the ten days of the period of the strike off the computation and also take off the 18 days which the project was behind as of March 22, 1956, which was the date the strike commenced, what was your percentage of completion?

A. Scheduled completion?

Q. Yes. A. 53% was scheduled.

Q. And what was the actual?

A. 47%. [1403]

Q. That is in the F area?

A. In the F area.

Q. All right. Now, make the same computation in the H area. What was the schedule?

A. About 18% of the schedule.

Q. And what was the actual completion in the H area? A. 41.1%.

Q. As of March 22, 1956, Mr. Reed, what was the total percentage of actual completion as contrasted with the total scheduled completion on that date. I am referring now not to the concrete item but to all items of the contract as of that date?

A. In the F area on March 31 it was 25.2% scheduled or actually completed, and as scheduled was 27%.

Q. And as of the same date?

A. Wait, pardon me. I have the wrong one.

The Court: What is this percentage now?

Mr. DeGarmo: This is the percentage of the total contract, which included all items, including the concrete.

The Court: Yes; all right.

(Testimony of Ramon E. Reed.)

A. Pardon me. I was wrong in the F area. We had completed 25.2% total and scheduled as of March 31 was 43%.

Q. And in the H area what was there scheduled for all items; now, we are talking about all items and the actual completion. [1404]

A. 27% was scheduled; 19.5% completed; that is, on the 1st of April.

Q. As of the 1st of April? Now, as of the first date that you have a record after the completion of the strike which was, I think the testimony is the work was resumed on June 17, 1956; what was the over-all, and by "over-all," I mean all items of the work, percentage of completion, actual and the percentage scheduled? Give it to us by areas.

A. June 21 is the first one I have here.

Q. You are speaking as of June 21 now, 1956?

A. It was showing that there was 81% of the work scheduled in the F area and 32% actually estimated as complete.

Q. And in the H area what was the scheduled?

A. 62% scheduled and 22% estimated being complete.

Mr. DeGarmo: You may examine.

Mr. Etter: No questions.

Mr. DeGarmo: That is all, Mr. Reed.

(Witness excused.)

Mr. DeGarmo: I would like to call Mr. Nelson.



RALPH NELSON

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as [1405] follows:

Direct Examination

By Mr. DeGarmo:

Q. Mr. Nelson, from your cross-examination yesterday the request was made that you compute and produce this morning the cost of forming and framing materials and supplies as of March 31, 1956. Have you made that computation from your records? A. Yes, sir; I have.

Q. Will you state what those costs were and separate them as to areas F and H, if you will?

A. In the 100-F area, March 31, the cost as per the job books was \$18,301.80. For the 100-H area, \$11,440.44.

The Court: I didn't get you, first, on the F area?

A. \$18,301.80.

The Court: All right.

Q. (By Mr. DeGarmo): You were also requested, Mr. Nelson, during the course of your cross-examination, to compute and be prepared to testify this morning as to the actual charges as reflected by the books of account of the Hanford project for company equipment or for the equipment on the project during the strike period; have you made that computation? A. Yes, sir; I have.

Q. Will you state what was the charge which

(Testimony of Ralph Nelson.)

appears upon the books and records of the corporation of this particular project?

A. \$689.35. [1406]

The Court: \$689?

A. Thirty-five.

The Court: Thirty-five?

Q. (By Mr. DeGarmo): Now, I think you testified yesterday, did you not, Mr. Nelson, that during the period of the strike there was no charge by the district office for any of the equipment except certain of the pickups and that type of equipment?

A. Yes, sir.

Q. That is, after the end of March, 1956?

A. After the end of March.

Mr. DeGarmo: You may examine.

Mr. Etter: No questions.

Mr. DeGarmo: That is all, Mr. Nelson.

(Witness excused.) [1407]

Mr. DeGarmo: I will call Mr. Alfred J. Goade.

### ALFRED J. GOADE

called and sworn as a witness on behalf of the plaintiff, testified as follows:

#### Direct Examination

By Mr. DeGarmo:

Q. Mr. Goade, where do you reside?

A. Boise, Idaho.

Q. And did you come here last night for the purpose of testifying at this trial?

(Testimony of Alfred J. Goade.)

A. Yes, sir.

Q. Will you state what your position with Morrison-Knudsen Company is?

A. I am assistant comptroller in charge of accounting administration.

Q. Will you tell us, Mr. Goade, first, what educational background or experience you have for your position as assistant comptroller?

A. I have a bachelor of science degree in business administration from the University of Idaho, and I have almost 18 years' experience with Morrison-Knudsen Company.

Q. And have you worked for any other organization than Morrison-Knudsen Company in the accounting field?

A. No, sir. [1408]

Q. You have been in the accounting end of the corporation for 18 years, you say?

A. Yes, sir.

Q. As assistant comptroller, Mr. Goade, will you state generally the scope of your duties?

A. I have charge of the home office accounting, the branch office, and the field accounting in an administrative capacity, and I do some work with personnel, and that is about it.

Q. Are there other assistant comptrollers than yourself?

A. Yes, sir; there are two others.

Q. And in what field do they have particular jurisdiction?

A. One is in charge of company procedures, and the other is in charge of taxation.

Q. Mr. Goade, will you state the scope of the operation of Morrison-Knudsen Company?



(Testimony of Alfred J. Goade.)

A. The company is world-wide in scope. Last year we had approximately \$400,000,000 in uncompleted volume on a world-wide basis, and I think at the present time we have around 75 straight company operations and possibly 60 joint venture operations, and some 25 or 30 subsidiary companies that operate in this country and overseas.

Q. And are those world-wide activities as far as accounting procedure, centered in the Boise [1409] office? A. Yes; they are.

Q. Now, will you tell us, Mr. Goade, whether the company, for operational purposes, is divided into any divisions for operating purposes?

A. Yes, sir; we have seven operating districts.

Q. And is there one with headquarters in Seattle? A. Yes, sir.

Q. Where are the other headquarters of the various districts?

A. We have one in Los Angeles; Anchorage, Alaska; we have what we call the Boise district; we have an eastern district; and New York; that is, we have seven.

Q. You have an international district, also, in New York? A. Yes, sir.

Q. And an international district out of San Francisco? A. Yes, sir.

Q. State what bookkeeping or account procedures are handled in the district offices themselves?

A. The district offices do not maintain a separate set of records. For accounting purposes they are actually just a part of the home office accounting.

(Testimony of Alfred J. Goade.)

Q. They are not regarded, then, as branch offices?

A. No, sir.

Q. In connection with your duties as an assistant comptroller, Mr. Goade, do you have opportunity to be familiar [1410] with what is known as the equipment pool of Morrison-Knudsen Company?

A. Yes, sir.

Q. Will you tell the Court and counsel how this equipment pool operates and how it is handled from an administrative standpoint of the company?

A. The equipment is distributed, actually, by the operating districts, that is, it is assigned to the operating districts. The operating districts, in turn, rent that equipment to the projects.

Q. Now, when you say, "it's assigned to the district," is it charged by the Boise office to the district?

A. No, sir, the value of the equipment is maintained at all times on the books of the home office only.

Q. And are depreciation schedules maintained in the home office only, too?

A. Yes, sir.

The Court: Am I correct in assuming that, at least, except for minor items that the equipment is purchased by the Boise office?

A. Yes, sir.

The Court: It does all the purchasing of the major equipment and then assigns it out to the district office and then the district office makes the rental arrangement with the jobs, the project?

A. That is correct.

Mr. DeGarmo: May I have 51, I think it is?

(Testimony of Alfred J. Goade.)

Q. Are you familiar, Mr. Goade, with the document which I am handing you as Plaintiff's Exhibit 51 (hands paper to witness)? A. Yes, sir.

Q. And does that document, in general, outline the handling, the method of handling of company-owned equipment? A. Yes, it does.

Q. Now, in the establishment of rental rates for inter-company accounting purposes, what is the base used?

A. Actually, it is a base that is determined to try and recover certain costs.

Q. And what are those costs which you are attempting to recover in this case?

A. Those costs are depreciation, taxes and insurance, some transportation.

Q. And what is the formula which is used for the purpose of determining a dollar amount of rental for a particular piece of equipment?

A. Our formula is 60% of the AGC rate for the first twelve months, that is, on a new piece of equipment. After twelve months the rate is reduced to 65% of that rate.

Q. Now, does that 65% of the base rate continue thereafter, [1412] regardless of whether the piece has been depreciated entirely on the books and records of the company, the Boise office, or not?

A. Yes, it does.

The Court: I am afraid I didn't understand that answer, he said 60% of the AGC rate for the first twelve months?

Mr. DeGarmo: And 65% of that amount.



(Testimony of Alfred J. Goade.)

The Court: Oh, I see. Then, 65% of the 60%?

Mr. DeGarmo: I say, thereafter, continuing.

The Court: All right, I understand now.

Q. (By Mr. DeGarmo): Mr. Goade, after this equipment is assigned out to the districts and they make a charge to the various projects, what happens to that charge?

A. That charge is entered in our records, it's credited to the district.

Q. Well, how did you get in the Boise office the basis for charging the project and crediting the district?

A. The project sends in what we call a monthly equipment rental report which lists the equipment and the use on that project.

Q. Now, is that uniform throughout the company operation?

A. Yes, sir.

Q. And then when you get this report then do you charge back to the project the amount of the rental, and credit [1413] the district office with the same amount?

A. That is correct.

Q. All right, when you get to the end of the year, Mr. Goade, what do you then do with these charges or with these credits which have been credited to the district office and charged to the project from an accounting standpoint?

A. Actually, they become a part of what we call our equipment pool operation.

Q. And as a part of the equipment pool operation, Mr. Goade, are there any other credits to this account than the direct rental to the projects, the

(Testimony of Alfred J. Goade.)

company projects?           A. Yes, sir.

Q. And what are those credits?

A. Those credits are from rental of outside, or equipment rented to outsiders.

Q. Now, included in outsiders are your own joint venture projects?           A. Yes, sir.

Q. And is that true whether it is a joint venture sponsored project by Morrison-Knudsen Company, their project, or whether it is just a joint venture of which it is one of the joint venturers?

A. Yes, that is true.

Q. What is the distinction between a joint venture sponsored [1414] project and one in which Morrison-Knudsen Company is merely a venturer?

A. On the sponsored projects Morrison-Knudsen has charge of the operations and also the job records.

Q. All right. Now, when equipment of Morrison-Knudsen Company which is held in this equipment pool is rented to a joint venturer, a sponsored joint venture, that is one in which Morrison-Knudsen Company is the sponsoring contractor, is that equipment leased to the joint venturer at the company rate or at some other rate?

A. At some other rate.

Q. And state whether that rate is a greater or a lesser rate than the company rate.

A. It is a greater rate.

Q. And in the event the equipment is leased to a joint venture project of which Morrison-Knudsen Company is not the sponsoring contractor, is it

(Testimony of Alfred J. Goade.)

leased at the company rate?           A. No, sir.

Q. At what rate is it leased?

A. At a greater rate.

Q. Does the company have occasion from time to time to lease equipment to others than any of its joint venturer projects?           A. Yes, sir. [1415]

Q. And in the the event it is leased to anyone on the outside, is it leased at company rate or another rate?           A. At another rate.

Q. And is that rate greater or lesser than the company rate?

A. It is greater than the company rate.

Q. Then, in the equipment pool as maintained by the Boise office, is there consolidated all of the revenue from this equipment, whether it is project revenue or joint venturer revenue or complete outside revenue?

A. That is correct, it is consolidated.

Q. Do you have with you, Mr. Goade, a balance sheet or a profit and loss statement, rather, for the corporation?           A. Yes, sir.

Q. Will you produce it, please?

A. (Witness produces paper.)

The Court: Are your equipment vehicles insured?

A. Yes, sir.

The Court: And with what office or how is the insurance carried?

A. It's carried by the Boise office, we have fleet policies.

The Court: How about taxes and licensing?



(Testimony of Alfred J. Goade.)

A. Some licensing is carried on by the job where it is a local thing, and most taxes, however, are paid.

The Court: Paid by the Boise office? I see. [1416]  
Licensing would depend on the laws of the State where the vehicles are operated, I suppose.

The Clerk: Marking Plaintiff's 52, your Honor.

The Court: What is that?

The Clerk: 52.

(Whereupon, Plaintiff's Exhibit No. 52 was marked for identification.)

Mr. Etter: We accept that.

Mr. DeGarmo: It is used largely for illustrative purposes, I am not intending to, although it is the statement.

Q. Mr. Goade, I am handing you that which has been marked as Plaintiff's Exhibit 52 for identification. Will you state what it is (handing paper to witness)?

A. This is a pre-audit profit and loss statement of Morrison-Knudsen, Inc., for the year ending December 31, 1957.

Q. When you say a "Pre-audit Statement," what do you mean, Mr. Goade?

A. We are in the process now of having our books audited. There will be some adjustments from this statement; however, we think they will be slight.

Q. Does there appear upon this statement an item which refers to this motor pool that you have been testifying [1417] concerning?

(Testimony of Alfred J. Goade.)

A. Yes, sir.

Q. Will you refer to that item and tell us which one it is, how it is headed?

A. It's under the general classification of "Miscellaneous Operations," and the title of the account is "Equipment Pool."

Q. Now, in this particular year of 1957 does the statement which you have in front of you reflect whether there was a profit or loss upon the equipment pool itself?

A. Yes, sir.

Q. And what is the figure that is shown there as to whether it is a profit or loss?

A. It is a profit.

Q. And in what amount?

A. \$1,370,332.11.

Q. Now, Mr. Goade, from your knowledge of the way in which this motor pool is operated, can you determine from that figure, first, as to whether there was a profit made on outside business?

A. No, sir.

Q. You can't determine that?

A. No, sir.

Q. Can you determine from that figure whether the equipment was actually leased to the company operations at cost or [1418] at any figure above or below cost?

A. No, sir.

Q. You cannot tell either?

A. No, sir.

Q. Why can you not tell?

A. Because in this account we are mingling items, we are bringing in revenue from rental, from straight M-K operations, and also rentals from outside sources.

Q. Well, then, is it true from the accounting end

(Testimony of Alfred J. Goade.)

of the company that you are not able to determine in any year whether this rental rate that is established for company owned equipment to company owned projects returns actually your cost or not?

A. No, sir.

Q. And there are no records which enable you to determine that, is that correct?

A. That is correct.

Q. In this particular balance sheet or profit and loss statement which you have in front of you, does it show the result of the various districts' operations of the motor pool?      A. Yes, sir.

Q. What does it reflect in 1957 with respect to Seattle district?

A. Seattle district shows a loss. [1419]

Q. Now, when a district shows a loss, what happens?

A. Well, actually, they haven't recovered their cost or they haven't rented enough equipment outside to make up the difference.

Q. Well, from a company standpoint what happens with that loss in a particular district?

A. That is just included on the home office books as the profit or loss from the operation of the entire equipment pool.

Q. If you will go across this statement, Exhibit 52 for identification, this lists, does it not, each district by numbers and states whether it operated its equipment pool at a profit or a loss during the year?

A. Yes, sir.

Q. And it is the consolidation of all of the seven



(Testimony of Alfred J. Goade.)

districts which produces a figure of a million some dollars' profit on the pool for a year, is that correct?

A. Yes, sir.

Mr. DeGarmo: I think you may examine.

Cross-Examination

By Mr. Etter:

Q. Just one or two questions, Mr. Goade.

A. Yes.

Q. If I understand you correctly, when you get right down [1420] to it you said that the value of the equipment was maintained in the home office and the depreciation was maintained in the home office?

A. Yes, sir.

Q. And the receipts from any type of rental, whether it is joint venture or foreign or otherwise, are all deposited or received into a separate account known as the equipment pool account, I suppose, something of that nature?

A. That is correct.

Q. And that it is determined, then, on the basis of the rental values from all of these different projects that whether or not during the year there is a loss or a profit arising from the operation of the equipment pool?

A. Yes, sir.

Q. Can I assume it to be reasonably correct in the years that you have been working for Morrison-Knudsen the company, at least within the equipment pool, has developed sort of an actuarial basis to rentals that are charged to local contractors, districts, and other contractors?

(Testimony of Alfred J. Goade.)

A. You mean the straight M-K contracts is the basis for the percentage we use? Yes, sir.

Q. And can I also assume if there were constant losses in [1421] the equipment pool, there might have been revision through the whole rental system if it became necessary to so do?

A. If there was a loss in the operation of the entire equipment pool which would reflect, also, the profit from outside rentals, yes, sir.

Q. You would do that? A. Yes.

Mr. Etter: That is all.

The Court: I assume, Mr. Goade, it's your policy to make rental pool operations self-supporting, so to speak?

A. That is correct.

The Court: In other words, you, in some manner or other, take care of depreciation and wear-out, so that you are able from the fund to purchase new equipment?

A. Yes, sir.

The Court: I see. All right, I have no other questions.

### Redirect Examination

By Mr. DeGarmo:

Q. Those rates are influenced by the amount of equipment that you are able to rent on the outside?

A. That is correct. The basis is not changed. Of course, if there is enough profit from outside rentals, that is, it's looked at from that picture only. [1422]

Q. There is one further question, perhaps, that

(Testimony of Alfred J. Goade.)

was raised by the Court yesterday that perhaps I should inquire of Mr. Goade concerning: If a particular project has a loss, what occurs with that, from an accounting standpoint, as far as the company operation is concerned?

A. That is consolidated with the home office records and becomes a part of the profit or loss from the entire company operations.

Q. Well, in this case of this particular project at Hanford, assuming that the books when closed out for that project would show a loss of, say, three hundred and some thousand dollars, and that thereafter there should be a recovery, what happens with a claim against the Atomic Energy Commission or by reason of this litigation, what happens with that fund?

A. If the contract records have not been closed, that would become a part of the revenue on the contract. If the contract records have been closed, it would be taken into the home office books as income from completed contracts.

Q. Then, is it true, Mr. Goade, that insofar as Morrison-Knudsen Company is concerned, all of the profits and losses in operations from all sources in all districts are handled in the Boise office and not in the districts themselves? [1423]

A. That is correct.

Mr. DeGarmo: I think that covers it.



(Testimony of Alfred J. Goade.)

Cross-Examination

By Mr. Carey:

Q. Mr. Goade, does this Exhibit 52 of yours cover the year 1957 or '56, the year in which the strike occurred?      A. 1957.

Mr. Etter: It is just illustrative.

Mr. DeGarmo: It's only illustrative in order to show the manner of operation of this pool and I at this time wish to offer the exhibit.

Mr. Etter: No objection.

The Court: Admitted.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 52.)

Recross-Examination

By Mr. Etter:

Q. One question, Mr. Goade: Can you tell me whether this particular contract has been closed, or are the books still open?

A. I believe the books are still open on this particular contract.

Mr. Etter: That is all.

Mr. DeGarmo: That is all, Mr. Goade.

(Witness excused.) [1424]

Mr. DeGarmo: Call Mr. Madsen.

R. H. MADSEN

called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. DeGarmo:

Q. Your name is R. H. Madsen?

A. Yes, sir.

Q. Where do you reside, Mr. Madsen?

A. In Bellevue, Washington.

Q. And what is your occupation or profession?

A. I am a civil engineer and I am presently serving as assistant district manager for the Seattle district, Morrison-Knudsen Company.

Q. Where did you receive or obtain your education as an engineer, Mr. Madsen?

A. I graduated from the University of Utah with a B.S. degree in civil engineering in 1937.

Q. Subsequent to your graduation will you state what experience you have had in the construction field?

A. Yes, sir. About five years after getting out of school I was employed as an engineer for the Bureau of Reclamation and I went to work for the joint venture consisting of Utah Construction, Morrison-Knudsen Company and Pomeroy, on the construction of the Geneva [1425] steel plant at Provo, Utah; and I was transferred from there to the Anderson Ranch dam on the joint venture of Morrison, Shea, Twaits and Winston Company. I was thereabout two and a half years.

(Testimony of R. H. Madsen.)

Q. What position did you occupy with that joint venture?

A. I was the project engineer at the Anderson Ranch dam, and from there I was transferred to the Cascade dam, built by Morrison-Knudsen Company north of Boise, Idaho, as assistant project manager. I was on that job about two and a half years; and from there I was transferred to the Grand Coulee dam as assistant project manager on the Morrison-Knudsen-Peter Kewitt Company contract for the construction of the pumping plant, the switchyard and canals, and so on. I finished, or I was project manager there until the end of the job six or eight months; and from there I was transferred to the Morrison-Knudsen Company job in Canada, on construction of the power plant and transmission line, tunnels, and so on, at the Kittimat project for the Aluminum Company of Canada. And from there I was transferred to the Seattle district in September of '54, as assistant district manager.

Q. Were you the assistant district manager, then, of the Seattle district during the period of construction of the Hanford Works project? [1426]

A. Yes, sir.

Q. Mr. Madsen, will you tell us the jurisdictional district of the Seattle office, how wide the scope is of your operation?

A. Our office covers the states of Oregon, Washington, northern Idaho, Montana, north and south side, with some special arrangements when the com-



(Testimony of R. H. Madsen.)

pany branches out; we handled one job on the St. Lawrence Seaway; that is the general area, though, that we cover.

Q. What personnel are maintained in the district office, Mr. Madsen?

A. We have our regional manager, Mr. Griffin, located in our office, who covers the Northwest district and the Canadian district. We have our district manager, our district office manager, district engineer, purchasing office, accounting set up, and our estimating department, our engineering and estimating department.

Q. What office of the company does the estimating for bidding jobs within a district? Does the district office do the estimating or does each project estimate its own project?

A. The district office does the estimating for the work in the district.

Q. Does it also do the bidding of those jobs?

A. Yes, sir. [1427]

Q. Did you have some part, Mr. Madsen, in the preparation of the bid estimate for the Hanford Works project?

A. Yes, sir.

Q. You are familiar with it? A. Yes, sir.

Q. Will you tell the Court and counsel, Mr. Madsen, the process that is gone through in making an estimate for a bid?

A. Well, we get the plans and specifications, usually, about a month ahead of time and according to the terms of the contract you are required to make an inspection of the job. On our Hanford job

(Testimony of R. H. Madsen.)

the first inspection was made by our district engineer and by a project manager that had done work in the Hanford area in the earlier construction phases, and by one of our engineers. They spent, I think, as I recall, took a couple of days to do that, made a careful examination of the area to see what the nature of the work was physically tied to, what the roads and the power facilities, water access, and so on, was going to run into.

And then we go back to the office, and in the office we have several estimators who, when the plans come in, they take the plans and go through a detailed study of it, go through with a complete take-off of the amount of excavation, the amount of concrete, the [1428] amount of form areas that are required to form the job and the other detail items broken down as to classifications that can be priced out comparable to work that has been done in the past that we have records on available in our office. When we get the breakdown and the detailed calculations made, why, we proceed with the pricing out of the items and we have when we do the pricing and the take-off in this case, we had the superintendent who has been working on similar work, concrete work, using these uniform concrete forms and he has been with the company for a number of years, been at Grand Coulee and up on the Canadian job and working in the area around Seattle. He sat in on preparing the estimate.

The estimator has access to any record we have and access to any experienced people in our com-

(Testimony of R. H. Madsen.)

pany that have information on how the pricing should be done. Well, this estimate is worked up then on the detailed costs of the labor for each item, and cost of materials, and the cost of the permanent materials, the cost of the equipment. And when this is finally put together it takes somewhere around two weeks or so to get that amount of detail done, and when it is ready for review, why, we have a meeting in the district manager's presence so that he can review the bid [1429] documents and have the engineers and I sign on the final pricing of this job.

Q. Well, then, is that the process by which you eventually arrive at a bid price? A. Yes, sir.

Q. Now, it has been suggested that this bidding and construction progress schedules are based upon guesswork, is that true?

A. No, sir, that is not true.

The Court: I don't think anybody says they are guesswork, and also nobody says that they are infallible, the proof of the pudding is in the eating?

Mr. DeGarmo: That is correct.

The Court: I think you can demonstrate, as Bobby Burns said, "The best laid schemes o' mice and men gang aft a-gley." As a matter of fact, this resulted in a loss without strike benefits?

A. We don't know for sure.

The Court: Well, even if you collect from AEC the full amount of your claim and even the full amount of your claim here, you would still be behind on the job?



(Testimony of R. H. Madsen.)

A. Very little.

The Court: Well, Morrison-Knudsen's "little" probably wouldn't be my "little," but big to me. If I got these figures correctly, it seems to me that it was over a [1430] million dollar loss here, wasn't it?

A. Oh, no, sir, that is misleading.

The Court: No, that is not right.

Mr. Carey: \$322,000.

A. The books, the way they stand, show about \$330,000, and we have this present claim that runs around \$30,000 or \$35,000 that is in the record, plus a fair settlement on this, it would be questionable whether we would be in the black or in the red.

Q. (By Mr. DeGarmo): Mr. Madsen, in your years of experience with Morrison-Knudsen Company, what has been the experience that you have noted as to the ability of the company to meet progress schedules?

A. Well, we meet the schedules, that is what we end up doing, and we definitely meet the schedules when there is a penalty of \$1000 or possibly \$2000 staring us in the face, why, we make every effort to meet them, and in a case like this where there are weekly reports that have to be prepared on the job that compared the actual percentage complete with the scheduled percentage complete, and the AEC were very insistent that we do everything possible to keep on that schedule.

Now, in our contract, there is provisions in all government contracts, that give us relief in case of

(Testimony of R. H. Madsen.)

things that are totally beyond our control, such as [1431] unusually severe weather, changes in design, changed conditions, strikes, and such as that, which we are relieved from because it is impossible to fix that into a figure.

Q. I am showing you, Mr. Madsen, two documents which have been admitted in evidence here as Plaintiff's Exhibits 21 and 22. Are you familiar with those documents?           A. Yes, sir.

Q. Now, the chart which is here in the left-hand side of it on each of these, shows a breakdown of the lump sum item into component parts. What is the reason or purpose that that is done, Mr. Madsen?

A. Well, this is done at the request of the owner and with their cooperation and our cooperation in arriving at an agreed breakdown for payment purposes, and also an agreed progress schedule that they are satisfied if we follow that schedule we will be able to meet their requirements for completion dates and that we will get paid as we go along in accordance with a definite arrangement.

Q. Is it necessarily true, Mr. Madsen, that the figures which are shown opposite each of these component items of work coincide in all instances with your bid estimate of that particular item?

A. No, sir, this is a condensation of the total breakdown [1432] and it is set up for the purpose of progress and payment and it would have some variation.

Q. I am showing you that which has been marked as Plaintiff's Exhibit 24, will you state if you are

(Testimony of R. H. Madsen.)

familiar with that document (shows paper to witness)?

A. Yes, sir.

Q. Did you assist in its preparation?

A. Yes, sir.

Q. Now, is that the type of document, Mr. Madsen, which is prepared just for a court case, or is that something that you would find on almost any construction project?

A. This is more or less a standard comparative schedule method for recording your actual scheduled progress against your actual progress, against your scheduled progress.

Q. Do no projects keep and maintain a chart of that type as a part of their normal business activity?

A. It's either kept on this form or it may be kept on a graph form; actually, it's the same information. This is the form that we used quite extensively in our work.

Q. Is it possible, Mr. Madsen, to determine from a chart so prepared, the period of time that you are either ahead or behind of scheduled progress at any particular period? [1433]

A. Yes, sir.

Q. And if you will read that chart, Mr. Madsen, and tell us what was the period that this job was behind its scheduled progress as of March 22, 1956?

A. We were 18 days behind schedule.

Q. And what was the period of time behind schedule as of October 1 or September 30, 1956?

A. 128 days behind, as near as we can, that is, as close as we can read it, from the graph.



(Testimony of R. H. Madsen.)

Q. Now, you have stated that you assisted in the preparation of this chart. Why was it, Mr. Madsen, that you ceased to chart the actual progress as of October 1 and merely used an extended line beyond that, based upon estimate?

A. Well, the one reason was that this presentation of our estimated losses was made up on the 11th of October, which was the end of the month, but the main reason was that by this date we had reached a rate of production which was comparable to our scheduled rate of production for the same work that we were into at that time. The strike effects were over. From that point on we felt that we were pretty much on our own again, as far as effects of delays, and increased cost due to the strike.

Q. Mr. Madsen, as assistant district manager of the Seattle district, did you have occasion to visit this particular [1434] project? A. Yes, sir.

Q. Will you state with what frequency you visited it?

A. I was at the job approximately one or two days a month throughout most of the life of the job, except during the strike period I was only there one time.

Q. Did you have any contact with the project other than by actual visits yourself?

A. Yes, sir.

Q. How? A. By frequent telephone calls.

Q. With what frequency would you be in contact with Mr. Reed, as the project manager?

(Testimony of R. H. Madsen.)

A. Well, it is just a guess, but as far as I could say offhand, at least every other day during the three times a week, during the main part of the work.

Q. To your knowledge, Mr. Madsen, were there any delays which occurred in the period from the inception of this project up till March 22, 1956?

A. Yes, sir.

Q. What were those?

A. The sheet metal strike of two days, and there was a delay in pouring the concrete for the sewer in 100-F, on account of radio-active problems, and also on account of the unusually severe weather. There was, also, [1435] a delay that we encountered of about 16 days, due to the unusually severe weather.

Q. What was the reason that weather delayed the job at that time?

A. In the early part, as we were opening up the foundation work and getting the concrete work started; and we all know what we are up against when we are trying to pour concrete in unusually severe, cold weather; we can't keep the frost out of the ground without extensive preparations, which you don't make for a normal operation.

Q. After the commencement of work on or about June 17, 1956, until the latter part of September, let's say the 30th of September, 1956, what, if any, reasons for delay do you have knowledge of other than those attendant on the strike?

A. Besides the Operating Engineers' and Team-

(Testimony of R. H. Madsen.)

sters' strike, there was a Carpenters' strike that followed immediately after the end of the Operating Engineers' and Teamsters' strike, to the extent of twelve days.

Q. All right, other than that do you know of any other reasons for delay, other than those which related to the Teamsters' and Operating Engineers' strike?

A. Well, there is a loss in time due to the inefficiency of start-up; again, I don't know whether that is what [1436] you are asking for.

Q. Well, I am asking for other than those which are claimed here?

A. Oh, no others that I have knowledge of, no, sir.

Mr. DeGarmo: May I have Exhibit 45?

Q. I am handing you, Mr. Madsen, Plaintiff's Exhibit 45 for identification. Are you familiar with that exhibit (hands paper to witness)?

A. Yes, sir.

Q. Mr. Madsen, did you make an investigation as to rental rates for office equipment and for engineering equipment?

A. Yes, sir.

Q. What, Mr. Madsen, did you find as to the rental rate for desks?

A. I have a letter here from the DeVoss Desk Company, that we requested from the Seattle office of the DeVoss people, to see what the prevailing rates for rentals on that type of material was, that type item. Desks vary in cost from month to month.



(Testimony of R. H. Madsen.)

according to the condition of the desk, and will vary from two to five dollars per month.

Q. And what rental was used in this exhibit?

A. We used two dollars a month.

Q. That was the minimum rate? [1437]

A. Yes, sir.

Q. What about chairs?

The Court: Are the defendants questioning the rates set out in this exhibit, No. 45?

Mr. Etter: No.

Mr. DeGarmo: If we are not questioning it, all right.

The Court: I don't like to spend too much time.

Mr. DeGarmo: I don't either, if they are not questioning it. This is the first time I have heard they were not.

The Court: Well, I don't doubt that. Go ahead.

Q. (By Mr. DeGarmo): I want to refer next, Mr. Madsen, to Exhibit No. 27. Does the record show that I have offered 45?

The Clerk: No, sir.

Mr. DeGarmo: I wish to offer it at this time. I held it out purposely because I had intended examining on it.

The Court: If there is no objection, it will be admitted then, 45.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 45.)

Q. (By Mr. DeGarmo): With reference to Plaintiff's Exhibit 27, Mr. Madsen, I call your at-

(Testimony of R. H. Madsen.)

tention to the [1438] fact that there are rental, or there are operating rates shown there for certain equipment at ten cents a mile. What, Mr. Madsen, is the fair cost of operating a pickup truck of a  $\frac{3}{4}$ -ton capacity?

A. We feel ten cents a miles is a fair cost, plus the rental.

Q. Plus the rental? A. Yes, sir.

Q. In other words, the ten cents is operating?

A. Yes.

The Court: What do you include in operating costs, gas and oil?

A. Gas and oil, lubrication, tires.

The Court: Tire depreciation? Wouldn't tire depreciation be part of the rental? A. No.

The Court: No? All right.

A. The rentals that the truck rental from Seattle charge is  $5\frac{1}{2}$  cents a mile, plus gas and oil, or  $5\frac{1}{2}$  cents per mile, plus gas and oil, on comparable pickups.

Mr. DeGarmo: The record should show that that referred to Item No. 3.

A. The Hertz-U-Drive people charge us for the vehicles we rent, they charge us \$9.00 a day, and they charge us \$8.00 a day and 9c a mile for a sedan or passenger car. [1439]

Q. (By Mr. DeGarmo): Well, that includes the profit to them, doesn't it? A. Yes, sir.

Mr. DeGarmo: This next testimony will relate to Item No. 8. May I have 29?

Q. Mr. Madsen, I am handing you Plaintiff's

(Testimony of R. H. Madsen.)

Exhibit 29. Are you familiar with the rate commonly known as AGC and AED for rental of equipment and automotive equipment?

A. Yes, sir.

Q. Will you state, Mr. Madsen, what use is made of those rates in the construction industry generally?

A. Well, that is rates that are used to rent equipment to other firms and other outsiders, and it is rates that we have to pay to outsiders for equipment we rent on the outside.

Q. Do you have occasion in the Seattle district from time to time to rent equipment?

A. Yes, sir.

Q. And when you do, what rates do you pay?

A. Generally, we pay the AED rates.

Q. And do you have occasion from time to time in the Seattle district to lease company-owned property, equipment of this type, to others?

A. Yes, sir. [1440]

Q. By "others," I mean other than joint venturers or your own subsidiaries?

A. Yes, sir.

Q. And when you do, what rates do you charge?

A. Approximately AED.

Q. Now, Mr. Madsen, are you familiar with what has been referred to here as the equipment pool?

A. Yes, sir.

The Court: I will take a recess before you go into that.

(Whereupon, a recess was taken for a period of ten minutes.)



(Testimony of R. H. Madsen.)

Q. (By Mr. DeGarmo): Mr. Madsen, I had just asked you a question concerning the automotive or the equipment pool. Is there such a pool operated out of the Seattle district? A. Yes, sir.

Q. Now, under the administrative procedure of the company who decides whether equipment is to be charged to a particular project when placed on that project?

A. In special conditions they are decided by the district manager.

Q. In the instance of this project, the Hanford Works, was there some decision made as to whether equipment rental should be charged to the project during the [1441] period of the Engineers and Operating Engineers strike? A. Yes, sir.

Q. Or Engineers and Teamsters strike, rather?

A. Yes, sir.

Q. And what was that decision?

A. It was decided not to charge rentals to the project or withhold rentals to the project during that time, except for the pickups that were actually used.

Q. Why was that done, Mr. Madsen, if you know?

A. Well, it was done, primarily, to keep the job on as even a keel as it could, to prevent management, and so on from getting discouraged and losing interest in the work, which develops, and not knowing what was going to be recovered or what was going to be the outcome, it was deferred until a later date.

(Testimony of R. H. Madsen.)

Q. On this pool which is operated, does that always operate at a profit in the Seattle district?

A. No, sir.

Q. I think we have already had some testimony that it didn't operate at a profit in the Seattle district last year? A. Yes, sir.

Q. And was that the first time that that has occurred, to your knowledge? [1442]

A. I don't think I could answer that. It's never an excessive item, if it works right, why it should come out around there, break even.

Q. Well, in the determination of whether you make a profit or loss, is there included in it the rentals which you receive or the rentals to others in the district? A. Yes, sir.

Q. And that is a part of the determination as to profit or loss to that particular district?

A. Yes, sir.

Q. When you rent out of the equipment pool, do you rent at the company rates? A. No, sir.

Q. What rates do you use?

A. In general, we use AED or a modification, depending on if there are special conditions, why, they are worked out on a special arrangement.

Q. Mr. Madsen, did you assist in the preparation of the document, Plaintiff's Exhibit 29, which is in front of you?

A. This was prepared pretty much on the job site, with our job site personnel.

Q. Now, you will note that this exhibit is prepared on a 90-day basis, is it not, that is, as to the

(Testimony of R. H. Madsen.)

equipment which was on the job during the entire period of the [1443] strike?           A. Yes, sir.

Q. Have you made a computation as to what would be the result if it was computed on a 98-day basis?           A. Yes, sir.

Q. Will you state what that result would be?

A. Basing the 90-day period on 92 days, since February came in there, I didn't actually run it out on the calendar, but assuming that the three months' period would be 92 days, and taking a pro rata of 90 days against 98 days, it would increase this total rental on a three months' basis to \$17,682.

Q. Could you tell us what that is in the dollar amount of increase?           A. Yes, sir.

The Court: Seventeen thousand?

A. Six hundred eight-two dollars sixty-six cents. I left the pennies off. It would increase it to that.

The Court: It would increase it to that?

A. It would increase it to that, and the amount of increase would be \$1,085.87.

The Court: I didn't get that last?

A. \$1,085.87.

The Court: Oh.

Mr. DeGarmo: Can I have plaintiff's Exhibit 30? [1444] This testimony has to do with Item 12, Mr. Reporter.

Q. I am handing you a document which has been identified as Plaintiff's Exhibit 30 (hands paper to witness). Has this document, 30, been admitted?

The Clerk: It was not.

Mr. DeGarmo: I didn't think so.



(Testimony of R. H. Madsen.)

Q. Are you familiar with that document, Mr. Madsen?      A. Yes, sir.

Q. Now, will you tell us the basis of the computation there made as to general administrative expense?

A. Well, this is recalculated on the basis that the general administrative expense went on continuously on a more or less uniform basis and, therefore, it's based on an average \$6,550 per day of the net revenue short times the 98 days, at 3%.

Q. Well, why did you use just the period of the three or four months there for the purpose of reaching an average, Mr. Madsen?

A. Well, that was the period that was affected by the strike, or the major part of the strike effects were taking place. That is the period that the books are handled on in order to extend it over the full time we arrived at a pro rata basis on it.

Q. Have you made an alternative computation, Mr. Madsen, using instead of the three months period or four months [1445] period shown on Plaintiff's Exhibit 34 for identification, the full time, that is the full scheduled time of the project?

A. Yes, sir.

The Clerk: I have marked Plaintiff's 53.

(Whereupon, Plaintiff's Exhibit No. 53 was marked for identification.)

Q. (By Mr. DeGarmo): I am handing you Plaintiff's Exhibit 53 for identification, will you state what it is (hands paper to witness)?

(Testimony of R. H. Madsen.)

A. General administrative expense, and it is a recalculation of the previous one and it is based on an average daily scheduled revenue over the full period of the 285 days in 100-F and 315 days in 100-H.

Q. Were those the number of days which were the originally scheduled time for completion of this contract?      A. Yes, sir.

Q. And the number of days which are shown on the graphs, Plaintiff's Exhibits 21 and 22?

A. That is correct.

Q. And when you used that alternative method of computation, what did you find was the daily average as compared with Plaintiff's Exhibit 30?

A. The new calculation shows an average daily of \$5,944, compared with \$6,550 used in the previous calculation. [1446]

Q. And using the same method of calculation, that is, the 98 days times the average amount, plus or times the 3%, what do you arrive at?

A. \$17,475.

Mr. DeGarmo: I now offer at this time Plaintiff's Exhibit 30.

Mr. Carey: 30?

Mr. DeGarmo: Yes; 30, and 53, which are the alternative computations of this.

The Court: Oh. Has 30 been offered before?

Mr. DeGarmo: No; it has not. I had reserved offering it waiting for this witness to take the stand, since he assisted in the preparation.

Mr. Carey: Well, it seems to me, your Honor,

(Testimony of R. H. Madsen.)

that we are entitled to know which amount they are claiming.

Mr. DeGarmo: Well, I am claiming the larger amount, but I am offering the Court an opportunity to decide. I can't decide the case; I can only furnish the material, if you want to agree to the larger one.

Mr. Carey: We don't agree to anything; we can't agree until we know what they are claiming.

Mr. DeGarmo: Our claim is already before the Court. We are claiming the amount as set forth in Plaintiff's Exhibit 30. I made that very clear.

The Court: I think 30 should be admitted, and I [1447] can't see any detriment in admitting the other one if the Court should have use for it. It doesn't bind the defendants to anything, of course, either one of them, and counsel says they are claiming the larger amount. All right, they will be admitted, then.

Mr. Carey: Both admitted, then?

The Court: Yes.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 30 and 53, respectively.)

Mr. DeGarmo: The next testimony of this witness will relate to Item No. 16.

Q. Mr. Madsen, will you state generally what is the effect upon the progress of work on a job of a prolonged period of shut-down due to a strike?



(Testimony of R. H. Madsen.)

A. It increases the cost tremendously to have to go through another start-up period.

Q. Why does it increase the cost?

A. Well, as Mr. Reed brought out here, your crews are disorganized, your men are not available after a prolonged shut-down for any reason; your supervision has been spread out; your equipment has been partially relocated; and in starting up any kind of a job after it has been shut down, you can't come back with a full crew the first day and you can't get full efficiency out of it [1448] until the men that you have have been able to assemble again, and then organize it into a good, efficient operation. They have to get reacquainted with their plans and get the forms straightened out and clean up the gravel and stuff that has rolled down into the footings, and, in general, it's an expensive operation to start up again.

The Court: In short, it takes time to get a job rolling?

A. Yes, sir.

The Court: To get rolling again after a strike, is that it?

A. That is correct, sir. It is just like you have to hire a new secretary, even; it takes her a little while to find out where to put things and who to see and what calls she can make for you. Just about a month with a new person, even though they are skilled, to get them organized again.

Q. (By Mr. DeGarmo): In connection with the pouring of concrete, is there some difficulty with

(Testimony of R. H. Madsen.)

respect to pouring of forms that is caused by lack of non-use?           A. Yes, sir.

Q. And what is that and what causes it?

A. Well, they dry up, and some forms will open up to the point where you can't even use them, you have to [1449] completely, if you have wood forms made out of green lumber, why, over a prolonged period in hot weather they will open up to where you can't use them, especially if they are forms that leave a surface that is exposed to view, and then you have to go back in after they sit for a long time, they will warp out of line even if you had them already to make your pour, you have to go in and readjust them and clean up and retension your she-bolts and line them up and put them in shape to pour.

Q. I am handing you, Mr. Madsen, Plaintiff's Exhibit 33, will you state if you are familiar with that exhibit (hands paper to witness)?

A. Yes, sir.

Q. Did you assist in the preparation of the exhibit?           A. I did.

Q. You are familiar with the theory of it?

A. Yes, sir.

Q. Yesterday during the examination of Mr. Nelson, I believe it was, the suggestion was made that instead of using the actual cost of labor up to March 31 of 1956, that you should have used the estimated cost since you have used the estimated cost of materials in the second sheet when you are dealing with materials. Now, have you made a com-

(Testimony of R. H. Madsen.)

putation showing what would have happened [1450] if you had used the estimated figures which counsel brought out yesterday? A. Yes, sir.

The Clerk: Plaintiff's 54.

(Whereupon, Plaintiff's Exhibit No. 54 was marked for identification.)

Q. (By Mr. DeGarmo): I am handing you Plaintiff's Exhibit No. 54 for identification, will you state what it is (hands paper to witness)?

A. Computations of excess labor cost due to strike using bid estimated cost per cubic yard.

Q. Now, this first figure that appears, "Actual Cost From June 6 to September 30, 1956," does that appear upon Plaintiff's Exhibit 33?

A. Yes, sir.

Q. And in the 100-F area?

A. That is right.

Q. And is the \$19.41, which appears here, the estimated cost which was used for labor?

A. Yes, sir.

Q. And what is the \$39.71, does that also come off Plaintiff's 33? A. Yes, sir.

Q. And using the estimated cost as distinguished from the actual cost to March 31, what did you find? [1451]

A. For 100-F area the labor cost would be \$45,-735.90.

Q. Now, how much is the company claiming on Plaintiff's Exhibit 33? A. \$25,458.90.

Q. Now, why is it that you reach that result, Mr.



(Testimony of R. H. Madsen.)

Madsen, if you use the estimate you arrive at so much larger a figure?

A. Well, we absorb the costs of the start-up of the first start-up, in the method of calculation that we submitted under the original presentation. Those costs on the start-up are, naturally, much higher than they are after you get under way and get your efficiency going, and we didn't bill anything that happened prior to the time of the strike, we are not intended to recover any of that.

Q. And this \$28.41 figure which appears in Plaintiff's Exhibit 33 included your start-up costs?

A. Yes, sir.

Q. Had this strike not occurred, Mr. Madsen, and you had been able to continue your operations and the pouring of concrete during the remainder of March, April and May until the schedule showed it should have been completed, what would have happened to that cost per yard of \$28.41?

A. It would have kept coming down until the end of the job, [1452] the average for the job, if everything could have worked without interruption, and so on, should have been approximately \$19.41 for the average cost during the life of the job.

Q. Now, have you made a similar computation with respect to the 100-H area? A. Yes, sir.

Q. And what did you find as to the 100-H area when you used instead of the actual cost to March 31, 1956, the estimated labor cost?

A. The revised calculation shows \$41,297.86, against the \$41,830.01.

(Testimony of R. H. Madsen.)

Q. Now, in the case of the 100-H area, your labor costs to March 31, '56, your actual labor, was, technically, slightly less than your estimate, was it not?

A. Yes, sir.

Mr. DeGarmo: I offer Plaintiff's Exhibit 54 as illustrative of the witness' testimony upon this point. We are not claiming the additional amount, to make that clear, we are still claiming the amount shown on Plaintiff's Exhibit 33.

The Court: Well, it will be admitted to illustrate the testimony just given.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 54.) [1453]

Q. (By Mr. DeGarmo): Mr. Madsen, during cross-examination, I think, of Mr. Reed, counsel for the Operating Engineers, as I recall, asked why—no, I believe it was Mr. Carey—asked why the claim as originally submitted under this item had been changed. Did you assist in preparing the original claim as set forth in the original bill of particulars?

A. Yes, sir.

Q. Now, will you answer that question as to why it was changed?

A. That original billing was made up the 11th of October and at that time we didn't have all the information, we didn't have the whole picture worked out to where we could see just what had happened to us, and we used, then, an arbitrary efficiency loss of 15% which the faster we got time to go in and analyze the actual cost figure, why, we

(Testimony of R. H. Madsen.)

came up with the revised calculation that we have definitely to substantiate it.

Mr. DeGarmo: This next testimony, for the record, will relate to Item No. 11.

Q. Mr. Madsen, will you state, first, if there is a customary rate of overhead and profit in use in the construction industry?

A. There is on standard work, extra work orders and negotiated work. [1454]

Q. Will you state what that rate is?

A. It's 15% overhead and 10% mark-up.

Q. Now, in work which you do for the United States Government, the various agencies of the government, such as the Army, the Navy, the Air Force, the Atomic Energy Commission, the Bureau of Reclamation, what rate do you receive as to overhead and profit on work that is considered as extra work not included in the contract?

A. Fifteen per cent and ten per cent, in general. There are a few isolated cases might be special, but in general, it's fifteen and ten per cent.

Q. Upon this particular project do you know what rate was received for overhead and profit on extra work orders to the Atomic Energy Commission?

A. Fifteen and ten per cent on our own work.

Mr. DeGarmo: Could I have Plaintiff's 49, please?

Q. I am handing you Plaintiff's Exhibit 49 for identification, are you familiar with that document (hands paper to witness)?

A. Yes, sir.



(Testimony of R. H. Madsen.)

Q. Will you state what the document is?

A. This is a tabulation whereby a loss of profits is arrived at.

Q. And how do you go about in this instance arriving at the mark-up or loss of profits? [1455]

A. Well, this tabulation lists the amount of the individual items as presented in these documents and totaled up to \$165,000 on which a 10% mark-up is placed for profit.

Q. Is there already included in one item of the exhibit the overhead item which you have testified is customarily 15%? A. Yes, sir.

Q. So that that is not shown as a separate item?

A. No, sir; that comes up with a total claim of that, of \$182,515.77.

Mr. DeGarmo: I offer the exhibit as illustrative of the witness' testimony.

Mr. Carey: What is that one?

Mr. DeGarmo: This is the computation.

The Court: Is that No. 55?

The Clerk: No, sir; it's 49.

Mr. DeGarmo: I don't think I offered it because I was waiting for this witness to testify.

The Court: It will be admitted, then.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 49.)

Mr. DeGarmo: You may cross-examine. [1456]

(Testimony of R. H. Madsen.)

Cross-Examination

By Mr. Etter:

Q. Mr. Madsen, you testified that you had some discussions in the district office with reference to equipment rentals on this project having to do with their revision I assume to be made later on as to what the project should be charged?

A. Yes, sir.

Q. Is that correct? A. That is correct.

Q. And you heard Mr. Goade's testimony this morning? A. Yes, sir.

Q. Am I correct in assuming that he said that the amount finally charged to this charge was \$689.35? A. Was that Mr. Goade's?

Mr. DeGarmo: I think that was Mr. Nelson that was testifying.

Mr. Etter: Was that Mr. Nelson or Mr. Goade?

Mr. Carey: Mr. Nelson.

Mr. Etter: Mr. Nelson.

Q. Do you know when it was finally determined that an actual charge for the company equipment rent or the equipment rentals, the actual charge to be made to this contract would be \$689.35?

A. Say that again, please? [1457]

Q. I say, when did you become aware, if you did, that the actual charge to be charged against this contract for the rentals of the company equipment was to be \$689.35?

A. As far as I know, that has not been decided yet.

(Testimony of R. H. Madsen.)

Q. Well, the testimony, if I recall it right, and I stand corrected if I didn't, was that the equipment charge that was made to the project was finally \$689.35?

A. That is tentative, though, isn't it, brought out in the testimony here?

Q. That was charged?

Mr. DeGarmo: That was the amount actually charged to date, yes, that is correct.

Mr. Etter: Actually charged, yes.

The Court: What was that amount again?

Mr. DeGarmo: During the strike period.

Mr. Etter: \$689.35.

The Court: All right.

Q. (By Mr. Etter): Is that correct?

A. Okay.

Q. Now, you mentioned, too, that there was a Carpenters strike on this project? A. Yes, sir.

Q. Do you recall when that occurred?

A. It was within one or two days of the close of the Operating Engineers and Teamsters strike. I can look it [1458] up if you would like me to.

Q. In other words, the Engineers and Teamsters strike was concluded and then came a Carpenters strike, is that correct? A. That is correct.

Q. Have you ever tried to make any determination of the losses, if any, that Morrison-Knudsen sustained as a result of the twelve-day Carpenters strike? A. No, sir.

Q. As to loss of efficiency or otherwise?

A. No, sir; it doesn't make any difference in the



(Testimony of R. H. Madsen.)

picture if you have a prolongation of the shut-down, as far as your costs of starting up. If there had been a break in between, then you would have a different situation but if you have got one delay following another, the thing that we are presenting for collection or asking relief on is the extra costs of starting up on account of this shut-down that you put us to.

Q. In actual days, am I correct, that the Engineers and Teamsters strike in actual days of strike, was 76 days?      A. Yes, sir.

Q. Is that correct?      A. That is correct.

Q. And you are making computations here, are you not, on the basis of 90 and 98 days? [1459]

A. Yes, sir; 98 days.

Q. Yes.

A. We are subtracting twelve days from the Carpenters strike from the over-all delay.

Q. Beg your pardon?

A. We are subtracting the twelve days out, in effect.

Q. Well, are you computing, did you originally compute the entire loss of days at 98 due to the Engineer and Teamsters, plus twelve, or 110 due to both of them?

A. One hundred ten would be a total period.

Q. I see.

A. But we are not charging you for any of those twelve days in any of these calculations where we use 98 days for longevity of the administrative costs

(Testimony of R. H. Madsen.)

or any of the other items are not included in our billing.

Q. You are charging us with 76 days plus another 22?      A. Built up.

Q. After the strike is over with?

A. That is correct.

Q. Is that correct?      A. That is correct.

Q. But you are charging them to us as actual days of strike, are you not?

A. No; we are charging them to you as actual increased costs due to their effect. [1460]

Q. But, I mean the 22 days in excess of the 76 you are charging them equal with the other days computed on an average?

A. Well, it doesn't work that way when we take the total days involved, does it?

Q. But you have days here that you reduced to, for instance, I notice a number of these exhibits have projected amounts of income from which are derived certain conclusions, each day is treated equally, isn't it, of the 98 days?

A. It is not treated equal but it is taken in the calculation as an over-all picture.

Q. You are not giving us any reduction even assuming that there was some work being performed and some income being derived during the 22 days following the 76 days of actual strike?

A. Yes; we are giving you the benefit of it in this calculation. There is 12 days in there that we are not billing you for and you are getting the ad-

(Testimony of R. H. Madsen.)

vantage of the revenue that we were able to recover on the period of the Carpenters strike.

Q. Yes.

A. There is a small amount of revenue came in that, if you will notice.

Q. In this general administrative expense, Item 12, you [1461] have reduced there or, rather, you have a charge there of seventeen thousand on this alternate basis of counsel, \$17,475, and you reach that by what you call an average daily schedule of revenue, isn't that correct?

A. That is correct.

Q. In other words, the time of the job divided into the projected revenue to be received?

A. That is correct, but that is an alternate calculation, it applies only to administrative costs.

Q. You are applying it only to an administrative claimed item?

A. On this special item only, because it is a possibility of a question, and that is why Mr. DeGarmo asked if we should work that one up to put into the record, and it is a little different situation than the rest of the work is.

Q. Originally in your claim for loss of profits of some \$64,000, you used a similar type of computation to determine, did you not, in your original claim or amended claim where you asked for \$64,000 or \$65,000 loss of profit?      A. No, sir.

Q. Well, didn't you take the scheduled revenue during the three months of the strike and take from that or determine a daily scheduled revenue, and



(Testimony of R. H. Madsen.)

then charge against [1462] us in your bill of particulars 10% of that amount or 640 some thousand dollars?

A. No, but you are confusing the picture there. That calculation was made during the period of time that the strike was affecting, and it was not over the whole life of the job.

Q. Yes.

A. So, you have got two problems there that you have got to keep straight.

Q. Not the exact figures, but you used a similar system of computation, is what I am trying to get at?

A. No, sir.

Q. Well, haven't you arrived here at a daily average scheduled revenue?

A. We have arrived at it over just the period affected by the strike.

Q. But, I mean, you have gone first, as I understand?

A. Well, now, I can't see which ones you are looking at, and you get two of them mixed up, then I am going to get mixed up on my testimony.

Mr. DeGarmo: Give him the exhibits there.

Q. (By Mr. Etter): Well, that is 12 and 30, I believe, is it, 12 and 30?

The Clerk: You aren't referring to 12, are you? [1463]

Mr. Etter: Oh, this is it.

The Clerk: Exhibit 30 and Exhibit 53 are the two exhibits.

Mr. Etter: Oh, yes.

(Testimony of R. H. Madsen.)

The Court: 30 and 53 were the two on general administrative expense.

Mr. Etter: I think it's in the evidence.

Mr. DeGarmo: The original is in the file, Mr. Etter, we never did present that before. There is a copy of it in the amended bill of particulars, I believe. I will give him a copy of that amended bill of particulars so that he has all three of them.

Mr. Etter: Your Honor, I am referring to the amended bill of particulars, page six, of the amended bill of particulars.

The Court: All right.

Q. (By Mr. Etter): These two exhibits which are the alternative suggestions, now, what I was wanting to inquire and I am referring here now for the record to this bill of particulars in the amended complaint which Mr. DeGarmo supplied me here, to Item 11, Mr. Madsen, where it appears that in computing loss of profits, original scheduled revenue has been totaled for the months of April, May and June; do you follow me there?

A. That is correct, yes, sir. It's the period of the [1464] strike.

Q. Oh, yes; that is just the period of the strike, but what I am saying, a similar method of computation was used in not exactly the same, but a similar method was used in determining what the daily scheduled revenue was here for Item 11, as shown in Exhibit 53?

A. No; it's similar on the first calculation.

Q. All right, on the first calculation, then.

(Testimony of R. H. Madsen.)

A. Yes, sir, and that is applied to the period that was affected by the strike.

Q. Yes; original scheduled revenue, and then you are referring now to similar?

A. Yes, sir.

Q. Now, how is 53 different in principle?

A. Well, 53, on account of the general administrative expenses that pertain to the Boise office and our Seattle district office on the overhead setup.

Q. Yes.

A. That goes on pretty much as a uniform thing. It has to be established as the setup of your operations, based on the volume of work you expect you are going to be able to do.

Q. Yes, but you reached it by taking a percentage of the originally scheduled daily revenue, isn't that how you reached that? [1465]

A. Here is how we worked it out, right off of the schedule here we took the scheduled starting date and the scheduled completion date, 285 days, I think, on F, and half a month longer on H, 315 days on H.

Q. Correct.

A. (Continuing): And we took this for an average because the overhead and administrative situation is a continuing thing that has to be set up based on the over-all volume of work that you expect to do.

Q. Yes, and, of course, the averages included——

A. (Interposing): Do you want these?

Q. No; the average included, did it not, or contemplated that at the end of March the projected



(Testimony of R. H. Madsen.)

revenue was behind about some 240 odd thousand dollars?

A. Well, now you are going back to the original presentation. Net revenue short at the end of April was \$240,000.

Q. The projected, the actual revenue, was short of the projected revenue by that amount, isn't that correct?

A. That is correct.

Q. Now, you referred to a claim that has been made to the government. What does that claim pertain to, particularly?

A. It pertains to the mechanical installation of the pumps proper, the physical set-up of the pumps, and I can [1466] review what testimony here Mr. Nelson gave, if you would like, that in the bidding we take bids from the prospective subcontractors, one group of the mechanicals and the other group of the electricals, and we contact the possible people that are interested and ask them if they would like to submit a bid, and if they indicate they are going to, why, we wait until we get their bids or we figure on taking their bids into consideration in whoever comes in with the lowest bid and on this particular problem here that developed when the time required to mail our bid in arrived, we had not received all of the quotations back in from the mechanical subcontractors, mainly the University Plumbing and Heating.

Q. All right.

A. (Continuing): And we knew we were going to get a quote, and what we used then in presenting

(Testimony of R. H. Madsen.)

our bid and getting it into the mail in time was a figure of our own, an approximate figure that we felt was a safe figure, figuring that we would revise it by telegram which has to be done frequently because a lot of times you get these quotes at the last minute by telephone and you don't have time to get them into your bid and mail it in; so what happened on this set-up here, we had our bid submitted and we got this telephone quote from [1467] the University Plumbing and consolidated that into our figures, and it was a mechanical quote, supposedly including the cost of installing the pumps.

It went on and we sent our telegram on it reducing our bid by about \$129,000; I will give you \$129,520.

Q. I see.

A. (Continuing): And when we got their confirmation of their bid, which is the customary way they do, they send in a letter of confirmation.

Q. You are referring to University Pumps now?

A. Yes; we got their confirmation in, we got lined up to write the subcontract agreement up, and then they indicated that their quotation did not include the millwright work.

Q. I see.

A. (Continuing): And we discussed it with them and they claimed that they never had it in their figure and rather than get into litigation and difficulty over that, or create a situation that might tie the job up, and so on, why, we went ahead then and did the millwright work ourselves.

(Testimony of R. H. Madsen.)

Q. Have you ever brought any action against this subcontractor claiming liability of the subcontractor?

A. No, sir; no legal action has been taken against them.

Q. Did you make any claim to them at [1468] all?

A. Oh, we had meetings with them and had strong discussions, if you know what I mean, on that.

Q. They refused to pay?

A. And they refused to take it.

The Court: Pardon me; do I understand your testimony correctly that for the reasons you stated here, for the reason of policy, and so on, you thought it was the best thing; you actually entered into a written subcontract on the basis of what they contended rather than what you did so you wouldn't have any suit, now?

A. No; we entered into a contract agreement and we took that on ourselves, and later on we presented the problem to the AEC for a claimed error in bidding, and that was forwarded on to their Washington office and they ruled administratively that they could not take care of it on account of the time limit, for one thing, a technicality. It had gone beyond the required time, and we appealed that and it is in the controller's office at the present time. It has been there for, oh, I don't remember the exact time, but some time before Christmas.

Q. (By Mr. Etter): To follow up his Honor's



(Testimony of R. H. Madsen.)

inquiry, what actually happened, you did sign a contract with the subcontractor that you thought included these items? [1469]

A. No, sir; we did not sign a subcontract. We had their telephone bid.

The Court: A telephone bid was made, is where the error came in, in a telephone conversation.

Mr. Etter: I see.

Q. Now, is this claim that you have concerning only that item?

A. That is the only claim outstanding.

Q. That is the only claim outstanding? You haven't made any claim here for loss because of unusually severe weather?

A. What do you mean, for money?

Q. Yes.

A. We only get an extension of time for that, and we are not billing you folks for any cost involved prior to the start of this strike.

Q. I see.

The Court: I was going to ask a while ago, and I thought I had better not chip in too much. Did you ever ask for extensions of time?

A. Yes, and we eventually got extensions of time to take care of this loss in efficiency, but we never got it.

Q. (By Mr. Etter): That is right, because of the strike?

A. Because of your strike, they wanted to only give us 26 days and if we could only have gotten 26 days there would [1470] have been this additional

(Testimony of R. H. Madsen.)

time where we had a loss in efficiency in start-up that would have been billed to us as \$1,000 a day on each billing at the end.

Mr. DeGarmo: You said "26," do you mean "26" or "76"?

A. Seventy-six, pardon me.

The Court: The Court will recess until 2:00 o'clock.

(Whereupon, court was adjourned until 2:00 o'clock p.m. on February 26, 1958.) [1471]

Wednesday, February 26, 1958—2:00 o'Clock P.M.

(The trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit:)

R. H. MADSEN

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Etter:

Q. Mr. Madsen, I think you testified that you had personal knowledge of an application for extension that was made with regard to completion of this contract?      A. Yes, sir.

Q. And do you recall when that extension was applied for?      A. Well——

(Testimony of R. H. Madsen.)

Q. (Interposing): Oh, approximately?

A. Shortly after the end of the strike.

Q. Shortly after the end of the strike? It would be in the fall, then, would it not, of 1956?

A. Well, of course, we put them on notice. I don't know whether it was in writing or verbally, at the time the [1472] strike started that we were into a strike and called attention to the fact that it was beyond our control and we would be requesting an extension of time to cover it.

Q. I see, and an extension finally was made in writing, I assume? A. Yes, sir.

Q. And do you know for how many days, how many days were requested, how many days extension, if you can tell me?

A. I don't have all the correspondence, but I think I can give it to you.

Q. That is all right.

The Court: Did you deal with the agency down there in your contract?

A. Yes, sir, on 100-F we were granted 186 days.

Q. (By Mr. Etter): Beg your pardon, now?

A. We were granted 186 days.

Q. 186 days?

A. And we actually completed the work on March 22nd when it was accepted and the revised completion date required was April 4.

The Court: That is on 100-F?

A. 100-F, yes, sir, and that takes into account a lot of additional things that happened after the October 1st date, such as late delivery on AEC



(Testimony of R. H. Madsen.)

furnished equipment, [1473] and changes, and so on, that had to be made in the installation and the strike and whatever time we had before. It covered the whole life of the job.

The Court: What was the extended expiration date?

A. The extended date was April 4.

The Court: Yes; thank you.

Q. (By Mr. Etter): That was 100-F, I think you said? A. 100-F, yes, sir.

Q. Was it the same as 100-H?

A. No; we were granted 145 days in H, and we had actual completion accepted by the AEC as of April 18, and our revised completion date required would have been April 24.

Q. How many days did you actually use of the 145-day extension?

A. Well, we used all but—which one are you talking about now?

Q. About H. A. We used all but six days.

Q. I see. 139 is the extension, then?

A. That is 18, 24, 139 days were used, right.

Q. Were those extensions requested for reasons other than the strike? A. That is right.

Q. In other words, you say some of these extras, is that [1474] what you were referring to as changes or modifications?

A. Extras, changes, unusual weather, and late delivery of government furnished materials.

Q. I see. A. And so on.

Mr. Etter: That is all, thank you.

Mr. DeGarmo: I have no further questions, your Honor.

(Witness excused.)

Mr. DeGarmo: At this time, if your Honor please, we would like to have published the deposition of Mr. Lee E. Knack.

The Court: For counsel's information I will run till 5:00 o'clock tonight to make up for the two-hour recess.

Mr. DeGarmo: I don't wish to necessarily take the time to read this deposition into the record. It has been stipulated with respect to the amount of the director of labor relations claim, with the exception of the proportion of his salary charged to the job, as I understand it, and that was the 700 and some dollars, I believe \$756.25, and the reason I am asking that the deposition be published is that this deposition covers that item and it is our position that we are either entitled to it as a part of the director of labor relations claim or as a part of general administrative expense. [1475]

The reason we took it out of the director of general labor relations exhibit is because it was included as a part of the general administrative expense. If you would care to have me read it, all right.

Mr. Etter: I don't think so. We don't agree that any damage was sustained. It is not necessary to read it. That is, damage incurred by reason of labor relations.

The Court: Which is it?

Mr. DeGarmo: It's Exhibit 6, I believe.

Mr. Etter: No; that is your legal expense. Item 4.

The Court: Oh, director of labor relations?

Mr. DeGarmo: Yes; the original amount in the bill of particulars included an item of \$756.25 which was the proportion of Mr. Knack's salary during the time that he was working trying to settle this strike.

The Court: I see.

Mr. DeGarmo: And we submitted an amended bill on that which eliminated that item because it was pointed out that that was included as a part of general administrative expense and it would be a duplication.

The Court: I see.

Mr. DeGarmo: And this deposition supports that item.

The Court: In the amount of?

Mr. DeGarmo: \$756.25. [1476]

The Court: All right.

Mr. Etter: Which is, however, in the general administrative expenses.

Mr. DeGarmo: That is correct; we are not entitled to it both places, but we are entitled to it, I believe, one place or the other.

The Court: I see.

Mr. DeGarmo: And I would like to have it stipulated that this deposition may be considered as though read in evidence.

Mr. Etter: It may be so stipulated.

The Court: All right, it may be considered as part of the record then, of testimony. I know there are different practices in different courts with ref-



erence to depositions, some of them admit them in evidence as exhibits, and I haven't any quarrel with that method, particularly. It always seems to me that they are either testimony or not, and should be part of the record, if you want this as an exhibit.

Mr. DeGarmo: I would prefer to have it considered as a part of the record.

The Court: All right, the Court will consider it, then. [1477]

\* \* \*

### DEFENDANTS' CASE IN CHIEF

Mr. Carey: Call Mr. George King.

The Court: Are all the exhibits admitted now up to 55? Are there any that have been withdrawn?

The Clerk: They are all admitted, your [1480] Honor, excepting one of the exhibits that was marked at the early hearing, that is Exhibit No. 5.

The Court: Has that been withdrawn?

The Clerk: Well, it must have been, it isn't around here.

The Court: It just isn't here?

The Clerk: It wasn't admitted.

The Court: All right, go ahead.

### GEORGE E. KING

called and sworn as a witness on behalf of the defendants, testified as follows:

#### Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. George E. King.

(Testimony of George E. King.)

Q. Could you speak up just a little bit so we can all get it over here, George? Where do you reside, George? A. Spokane, Washington.

Q. And how long have you been a resident of Spokane, Washington? A. All my life.

Q. All your life? And will you tell me where you have been to school?

A. Public schools here in Spokane, and business college here in Spokane. [1481]

Q. Public schools and business college here in Spokane? And did you have any other further training beyond business college? A. No, sir.

Q. And what training, or, rather, what instruction did you take in business college?

A. Public accounting.

Q. Public accounting? A. Yes, sir.

Q. And how long have you been engaged in accounting, as such, Mr. King?

A. Seventeen years.

Q. Seventeen years? And are you at the present time a certified public accountant?

A. Yes, sir; I am.

Q. And for what length of time have you been a certified public accountant? A. Since 1952.

Q. Since 1952? And you are now, or what is your association or connection with Morris, Lee & Company, certified public accounts, here in the city?

A. I am a staff member.

Q. Beg your pardon?

A. I am a staff member.

(Testimony of George E. King.)

Q. You are a staff member? Have you been a partner in [1482] that firm?

A. Yes, sir; I have.

Q. And for how many years were you a partner?

A. Five years.

Q. Five years? A. Yes, sir.

Q. And when did you cease to be a partner and become a staff member? A. July 31 of '57.

Q. July 31 of '57? And that was by arrangement with the company and with the other partners?

A. Yes, sir.

Q. And you have been with Morris, Lee & Company, did you say, how many years have you been with that company?

A. No; I have been with them 17 years.

Q. I see. In fact, I assume that after you had your training all of your accounting work has been done with that company?

A. Within that firm, yes, sir.

Q. And how old a firm is that, as a firm of certified public accountants, do you know?

A. It was really established in 1912.

Q. In 1912? A. Yes, sir.

Q. And that firm, do you know, at least, has been in [1483] existence, active since that time?

A. Yes, sir.

Q. Mr. Morris is the senior partner, is he not?

A. Yes; he is.

Q. And your offices are located where?

A. In the Old National Bank Building.



(Testimony of George E. King.)

Q. And in Spokane alone, or do you have offices other places?

A. We have branch offices in Wenatchee and in Oroville.

Q. In Wenatchee and Oroville? Up near the Canadian border, is that correct? A. Yes.

Q. All right. Now, were you requested to examine, make an analysis and a report with respect to an examination of certain items claimed by plaintiff here, Morrison-Knudsen, as damages arising out of an alleged breach of contract?

A. Yes; we were.

Q. And prior to the time that you made an examination, will you state whether you were supplied with what purported to be an amended bill of particulars respecting the items claimed as damages? A. Yes; I was.

Q. You were? And were you supplied, also, with certain other documentary evidence or claimed damages? [1484] A. Yes.

Q. And I will ask if, pursuant to that, you went to the City of Seattle? A. Yes; I did.

Q. And did you meet or, rather, did you go to the district office, I think we haven't it here, of the Morrison-Knudsen Company? A. Yes.

Q. And contacted the people there who are in authority, is that right? A. Yes.

Q. And at that time did you make a complete examination, analysis and audit, or if not, will you state what you did do?

A. It was a review; actually it wasn't a complete

(Testimony of George E. King.)

examination or a detailed audit, it was a review of the items.

Q. You say it was not a detailed examination and audit. Will you explain what you mean?

A. Yes, sir. From the standpoint of certain basic documents pertaining to the contract and to the contract accounting, they were not available in the district office since they are maintained in the home office at Boise, Idaho.

Q. I see. And did you, however, with regard to the particular contract that was involved, did you make such an [1485] examination and audit as you considered necessary to determine the accuracy of the items?      A. Yes, sir.

Q. And did it appear to you that so far as the records supplied to you, they were sufficient, were they, for you to make an accurate audit?

A. Yes.

Q. And, as I gather, there were some records, the originals of which might not have been available but which you as an auditor were willing to accept on the basis of the accounting records in Seattle?

A. Yes, sir.

Q. And how long did you spend over there?

A. Approximately one week.

Q. Beg your pardon?

A. Approximately one week.

Q. Approximately one week? And that was in examination of all of these records?

A. Yes, sir.

Q. And, as I understand, you received complete

(Testimony of George E. King.)

co-operation from the Morrison-Knudsen people in the making of your analysis and audit?

A. Yes; I did.

Q. Is that correct? A. Yes, sir. [1486]

Q. And did you as a result of your analysis, audit and examination, make an audit return, Mr. King? A. Yes; we did.

The Clerk: Defendants' 56.

Mr. Carey: That is 56?

The Clerk: Yes, sir.

(Whereupon, Defendants' Exhibit No. 56 was marked for identification.)

Q. (By Mr. Etter): Handing you what is indicated as Defendants' Exhibit 56 for identification, I will ask you to examine that, if you will, and I would like you to identify it (hands paper to witness).

A. This is our formal report that was submitted at the end of the review of the accounting records in the bill of particulars.

Q. And is that the formal record or the formal audit which is the result of the analysis and audit report which you made while you were in Seattle at Morrison-Knudsen's office? A. Yes; it is.

Q. And it is composed, is it, and based upon the working sheets and working papers made during your audit? A. Yes, sir.

Q. Which, in turn, was based upon these available documents that you have? [1487]

A. Yes.



(Testimony of George E. King.)

Q. And does it concern, Mr. King, all of the items listed in the amended bill of particulars?

A. Each individual item is covered individually as a separate item.

Q. As a separate item? A. Yes.

Q. And was an analysis made of each one of the separate items in the amended bill of particulars?

A. Yes; they were.

Q. Now, you have been here in the courtroom and you have heard the testimony on behalf of the plaintiff with respect to each of these separate items, is that correct? A. Yes.

Q. And was your examination made of those same items, can you tell that it was from your being here in the courtroom? A. Yes, sir.

Q. It was? And it is all incorporated, is it not, in this identification marked 56? A. Yes; it is.

Mr. Etter: I would like to offer this, Mr. DeGarmo, if you have no objection, at this time, so that as Mr. King goes along and testifies the Court may have the [1488] advantage of it.

Mr. DeGarmo: Yes; with the understanding that he is going to testify concerning it, I have no objection.

Mr. Etter: Concerning all of the items, yes, and I thought I would offer it at this time so his Honor could have it if he wished to follow along.

The Court: It will be admitted in connection with his testimony. If he doesn't cover any part of this, you may move to strike it out, Mr. DeGarmo.

Mr. Carey: Perhaps I ought to intervene here.

(Testimony of George E. King.)

Your Honor will notice it's addressed only to the Engineers, Local 370, but it may be considered as equally applicable to the Teamsters Local.

The Court: Well, that will be understood that it applies to both defendants equally.

Mr. Etter: And I supplied Mr. DeGarmo, I think, the other day with a copy of the auditor's report.

Now, may I have Exhibit 49, Mr. Taylor?

(Whereupon, said document was admitted in evidence as Defendants' Exhibit No. 56.)

Q. (By Mr. Etter): I am handing you Exhibit 49, Mr. King, in conjunction with comparisons that you may wish to effect, having to do with the final result. I will ask you whether you have noted that there have been——

The Court (Interposing): Mr. Etter. [1489]

Mr. Etter: Pardon me?

The Court: If you will give me a chance to find these, I would like to follow you as I go along. I have a rather chaotic filing system here on my desk. Where is 49? 49 is here somewhere.

Mr. Etter: It was the last recap that Mr. DeGarmo offered, your Honor, of the present claim.

The Court: Oh, all right, thanks. I have it now, if you will put them in numerical order.

Mr. Etter: I may lead here a little bit, but it isn't material, Mr. DeGarmo.

Mr. DeGarmo: I doubt if I object.

Q. (By Mr. Etter): You have heard certain

(Testimony of George E. King.)

proposed amendments being made by counsel and certain agreements, have you not, as to some of the final figures which you originally considered which were in the Plaintiff's amended bill of particulars?

A. Yes.

Q. And I might say to you that although if you haven't kept track of it that Exhibit 49, Mr. DeGarmo informs me is the present claim as to each one of the items which you have listed on which you made an analysis, do you understand that?

A. Yes.

Q. I will leave it there with you probably, to make it a [1490] little more expeditious in handling this examination.

The Court: This 49 includes all of the changes either in the bill of particulars or in the course of the trial here, is that correct?

Mr. DeGarmo: That is correct, and the changes that were made during the trial, I think, are all incorporated in 49.

Mr. Etter: All right.

Q. Now, I notice that in the report here you have attached, have you not, Mr. King, in the last sheet of your audit which is Exhibit 56, is that what that one was?

Mr. DeGarmo: 56, that is right.

Q. (By Mr. Etter): 56, Exhibit A, you have summarized, have you, the various items set out in the amended bill of particulars?

A. Yes, sir.

Q. So that a comparison can be effected with



(Testimony of George E. King.)

regard to your Exhibit A, which is your summary, with the exhibit that you have there numbered 49?

A. Yes.

Q. Is that correct? A. Yes.

Q. All right. And, likewise, you have indexed it, have you not, commencing on page one, with respect to each item which is claimed in the amended bill of particulars [1491] and has been reduced to a final claim as indicated by counsel in Plaintiff's Exhibit 49, is that correct? A. Yes.

Q. Now, when you made this analysis and audit, can you tell me from the standpoint of auditing, did you follow established, accepted procedures of auditing? A. Yes; I did.

Q. You did? A. Yes.

Mr. Etter: I might say this, your Honor, at this time: Your Honor indicated that if certain of this matter wasn't covered counsel could move to strike it. Now, I notice here that in Item 1 the amended amount which counsel has submitted in his Exhibit 49 is somewhat less than the amount which was determined by Mr. King's review and, consequently, I see no reason to have him go into an explanation of his Item 1 inasmuch as the amended item, since this trial started, is somewhat less than we found.

The Court: Well, I don't think Mr. DeGarmo would have any objection to instances of that sort.

Mr. DeGarmo: Except I will want to point out why they are less.

Mr. Carey: We agreed on that amount, your Honor.

(Testimony of George E. King.)

Mr. Etter: You see, the reason for that is this: When this audit was made by Mr. King, you will note that in [1492] the amended bill of particulars a claim had been made for \$13,940.28. Mr. King's audit indicated it was somewhat less, \$13,447. Now the plaintiff had reduced it to \$13,389.

The Court: I notice on the final page here, page 14, it's indicated that at least this accountant considered that the total claim of the plaintiff at that time was \$238,181.11, and according to Exhibit 49 it's \$182,515.47, so that there is a substantial difference in there, and I should think that where you concede amounts, or as to any items which you concede, I think I will state tentatively, subject to any objection Mr. DeGarmo may have, that you need not have the witnesses cover those where they are conceded by you as to the amount now claimed, of course, subject to the right of Mr. DeGarmo to cross-examine on them.

Mr. DeGarmo: Yes; I don't see any point in covering them when they are already admitted, except I want to point out why.

The Court: Yes. [1493]

\* \* \*

The Court: May I make this suggestion, I wish to be helpful, if it could be indicated as we go along whether the difference that the accountant has made is dependent entirely upon that difference in time between the actual strike days and the 98 days that the plaintiff computed or, if not, what amount is not involved in that difference?

(Testimony of George E. King.)

Mr. Etter: Fine.

The Court: You see what I mean as to each of these items.

Mr. DeGarmo: I think the audit report itself discloses that.

The Court: Oh, is that right? All right.

Q. (By Mr. Etter): Did you understand?

A. Yes.

Q. Now, first you said here that you, in the analysis that you made, you used the figure 76 days, the actual days of strike, rather than in the projected number of days [1494] followed by the plaintiff of 98? A. Yes, sir.

Q. And is that true, so that we don't have to cover it again about each and every item that involved any computation based on the days of time involved in the strike? A. Yes; it is.

Q. That is right.

The Court: I may interrupt more at the outset than I do later on; I want to be sure I understand this as we go along: Did you then, Mr. King, make any allowance for loss of efficiency because of slow-down after work was resumed?

A. No, sir.

The Court: I see. All right, go ahead. [1495]

\* \* \*

Q. Now, we will turn to Item 8 on the "Equipment Rentals," Mr. King. The amount here is indicated in the bill of particulars, is it not, in the claim made by plaintiff the amount was \$29,592.59?



(Testimony of George E. King.)

A. Yes, sir.

Q. And you determined by your review an amount of \$9,136.79?           A. Yes, sir.

Q. Now, did your determination have to do with the actual charges you found in the records against the equipment or the actual charges that would have been made under the procedures used by Morrison-Knudsen?

A. The charges we determined were the actual charges out of the Boise office, had they been charged monthly to the contract at the rates set up prior to the strike.

Q. In other words, had they been charged at the monthly rates set out of the Boise office the total would have been \$9,136.79, in your analysis now?

A. I might clarify that.

Q. All right. [1506]

A. A portion of it, in other words, a breakdown of the equipment, the major equipment rental, within this item.

Q. I see.           A. Was computed on that basis.

Q. I see. Now, there was testimony here this morning that thus far, I think, the testimony was that during the strike period the amount thus far that has been actually charged for rental against the equipment is the sum of \$689.35, was that information available during the course of your audit, or not?           A. I did not check that item, no.

Q. You did not check that item?           A. No.

Q. Your item that you are giving here now is

(Testimony of George E. King.)

one based, as you say, on the rental rates chargeable for the equipment use had it been so charged?

A. At the regular rates that would have been charged out of the Boise office.

Q. I see. Now, you have in your review, you have indicated "A. Major Equipment; B. Minor Equipment; C. Owned Concrete Forms; D. Rented Concrete Forms; E. Scaffold and Move-in and Move-out" totals, have you not? A. Yes, sir.

Q. Now, with regard to the major equipment, will you tell [1507] us what procedure you followed and in what manner you reached the amount that could be chargeable, in your opinion, against the job by the sum of \$4,427?

A. This was major equipment, company owned, which was rented to the contract, to the Boise office. In computing this we used the same time element as was originally in the bill of particulars, either a two and a half months' basis or a three months' basis, and computed it at the rates that would have been used had the Boise office continued charging the contract job at the rental rate used preceding this strike.

Q. In other words, you used the same basis of two and a half months and three months, did you, in computing? A. Yes, sir.

Q. That allowable amount under the practice that you found existing? A. Yes.

Q. Now, why was it that you arrived at this method, have you a reason for that?

A. On the basis that this was the actual expenses

(Testimony of George E. King.)

that would be incurred had they continued; in other words, through the strike period the Boise office would have continued charging the contract with the rental rates just as the rental rates that they would have sustained in the contract itself. [1508]

Q. I see. And did you note the manner in which the company had reached their figure under "Major Equipment" of \$15,913.75? A. Yes, sir.

Q. And how had that been achieved?

A. It was computed at the time element, two and a half or three months, in the case of a particular piece of equipment, at rentals of the AGC or the AED schedules which were not available to us at the time we made our examination.

Q. There were no charges against this contract, however, at the time of your examination based upon any AED or AGC schedules?

A. No, sir.

Q. Will you state in your opinion what you believe was the more realistic determination of actual loss and cost?

Mr. DeGarmo: Just a minute, if the Court please, I think that is the Court's decision, not this witness'.

Mr. Etter: Well, I think under accounting procedure he can give his opinion. The Court may not be bound by it.

The Court: If he feels that he can express an opinion as an accountant as to what is the proper accounting practice, I will permit him to answer



(Testimony of George E. King.)

that. Of course, it's [1509] for the Court to determine, ultimately.

Mr. Etter: That is correct.

The Court: All right.

Q. (By Mr. Etter): Would you give us your opinion, Mr. King?

A. Well, in my opinion it would be the rentals that would be sustained throughout the period of the strike, that would have been sustained otherwise without the strike, which would have been the Boise rental rates.

Q. I see. Now, going to "B," the minor equipment, there is indicated in the bill of particulars the amount of \$6,888.50. When you examined the major analysis and audit, why, you found \$851.95. Now, will you explain that to us and the reason for so finding it as to your figures?

A. Here, again, on the minor equipment that was itemized in the amended bill of particulars, we identified the equipment and followed it through to the assignment to the contract and in the majority of the cases of the items they were assigned to the contract at the nominal valuation of ten dollars and later transferred out of the contract at ten dollars. Thus, the contractor sustained no actual expense for the use of the equipment. In addition to that there was certain minor equipment that was purchased on the basis that the contractor had [1510] sustained the full ten dollars, plus the additional minor equipment that was purchased as an expense, we arrived at the \$851.95.

(Testimony of George E. King.)

Q. I see. And, in your opinion, do you believe that that is in accord with good accounting practice and procedures in your determination?

Mr. DeGarmo: May the record show my objection to this question?

The Court: Yes; it may show objection without repeating.

A. I believe so.

Q. (By Mr. Etter): Now, turning to "C," what is indicated as "Owned Concrete Forms"? Your determination of \$2,317.50 as to that item under the existing procedure had it been charged to the contract, will you explain that and your method in arriving at it?

A. The company-owned concrete forms in the original bill of particulars there was no differentiation made between company-owned and rented concrete forms which we took exception to and excluded the rented concrete forms, the footage that was actually rented from the Universal Equipment Company, leaving the balance of that footage being company-owned and extended at the rate claimed in the amended bill of particulars.

Q. I see. Now, with regard to the rented concrete forms [1511] under "D"?

A. We excluded that item in total, which I think has been excluded now in the amended exhibits on the basis that it appeared later on and was a duplication of charges.

Q. All right. Now, with regard to "E," the scaffold.

(Testimony of George E. King.)

A. That was in the same condition that the rented concrete forms were. The charge for it appeared here and again later on in the bill of particulars.

Q. I see. And the move-in and move-out charge?

A. They remained the same as in the amended bill of particulars.

Q. You charged them as indicated in the records which you found? A. Yes, sir.

Q. But you have heard the testimony here with regard to move-in and move-out costs?

A. Yes, sir; we made no change in this on the basis that the charges of the move-in were duplicated, on the basis that it was moved back to the same job and, therefore, cost exactly the same to move back. [1512]

\* \* \*

Q. All right. Now, turning to Item 11, "Loss of Profit," in the bill of particulars the loss of profits was indicated as \$64,190, and in Plaintiff's Exhibit 49, Item 11, which appears at the bottom of the exhibit, now is indicated as \$16,592.34. I note here in this Exhibit 56 to which I have been referring all the way along, without bringing the exhibit, that you eliminate any loss of profit by your review, is that correct? A. Yes, sir; we did.

Q. All right. Now, will you tell us, first, how, when you made your audit, how the company had computed the loss of profits; explain that?

A. In the amended bill of particulars, Item 11 is computed on an average daily projected revenue.



(Testimony of George E. King.)

Q. Now, this average daily projected revenue, did you tell me from your examination——

Mr. DeGarmo (Interposing): We are not claiming profits on that basis at this time, I can't see the purpose in spending the time on it. [1514]

Mr. Etter: You are still claiming \$16,000, and we are still claiming that you haven't got any. We haven't conceded any yet, so I think I will go ahead with it.

Q. (By Mr. Etter): On this Exhibit 24 did you have the opportunity to examine that in connection with your examination of Item 11, referring to the lost profits (hands paper to witness)?

A. Yes; I did.

Q. You did? And is that the projection that you are speaking about in advising us how the company computed the loss of profits claim?

A. This is a part of it; this is the graph part.

Q. All right, will you go ahead now with your explanation?

A. Well, we projected revenue for the months of April, May and June, they were averaged. I should say the projected revenue for those days less the actual revenue received, was averaged over the days to arrive at a daily revenue average which, in the original or in the amended bill of particulars, was \$6,550 per day.

Q. I see.

A. (Continuing): Based on the 98 days they have extended at a rate of 10% profit the average daily profit and arrived at \$64,190.

(Testimony of George E. King.)

Q. When you examined that, the company in computing the time loss that they indicated here, what factor did [1515] they employ, as you found in your examination, in computing the time loss?

A. In their computation of the time loss?

Q. Yes; in their computation.

A. It was based on projected revenue as it shows and was disclosed by this chart, Exhibit 24.

Q. I see. And I notice in your report that you indicate the company used some particular factors in which you set up the total days behind schedule on October 1st, 1956, as being 128 days?

A. Yes, sir; that is the chart, Exhibit 24.

Q. Now, did you find in your examination that that was the way the company reached their time loss of 98 days?

A. Yes, sir.

Q. I see. Now, what consideration did you give to that method of estimating the time loss or computing the time loss?

A. We recomputed on the average daily basis in view of the fact that they had made several other computations in their computations on average daily earnings, we computed the time back on the average daily revenue produced as compared to the projection.

Q. In other words, you based yours on the actual revenue produced rather than the projection of expected revenue? [1516]

A. A combination of the two.

Mr. DeGarmo: That was not his testimony.

Q. (By Mr. Etter): Well, what did you do in

(Testimony of George E. King.)

reaching your conclusion, how did you handle this matter?

Mr. DeGarmo: They used the average.

Q. (By Mr. Etter): Will you explain what you did?

A. In reaching our time loss element?

Q. Yes.

A. We took the projected revenue as set forth in the exhibit of the company and the number of days it was under construction at those revenue points, arrived at an average per day, a cumulative average per day, in which then we took the revenue received at the cumulative points, divided by the daily average, gave us the construction days or revenue days of construction completed, or based on those averages.

Q. Well, now, could you determine how many days of construction time which was based on the original company estimate had been completed and billed to the AEC on March 31, 1956?

A. On the method I explained, yes, it was 78 days.

Q. Seventy-eight days?           A. Yes.

Q. Now, following your method at that time on March 31, how far under your computation was the company then [1517] behind schedule?

A. Based on revenue days, it would be 44 days behind schedule.

Q. Forty-four days behind schedule?

A. Yes.

Q. In which you computed the company then



(Testimony of George E. King.)

was 44 days behind schedule? A. Yes, sir.

Q. On March 31, is that correct? A. Yes.

Q. Now, what did your tabulation, what results did your tabulation disclose, ultimately, after your examination of this element?

A. We came to the conclusion that there should be no loss of profits since for a twofold reason, since with all the rest of the items claimed in the bill of particulars they still would have sustained a loss and there was no justification to us for the percentage used of 10%.

Q. Why not, Mr. King?

A. It was our understanding in the examination that the bill of particulars were reimbursements of costs and if they were reimbursed for all costs they would have been returned to their position had not the strike been encountered. [1518]

Q. Had not the strike been encountered?

A. Yes, sir.

Q. In other words, your position, as I see it, is if there was reimbursements for costs you wouldn't accept a claim for profit?

A. They would have been returned to their position as if there had been no strike.

Q. I see. And, in other words, that position would leave them where they would realize either a normal profit or loss? A. Yes, sir.

Q. Independent of that fact? A. Yes.

Q. Even assuming the total amount of damages claimed in the bill of particulars, can you state whether or not your examination disclosed that even

(Testimony of George E. King.)

crediting that the company would have sustained a loss?

A. Yes, they would have.

Q. In your examination? A. Yes.

Q. Upon the records that were submitted to you?

A. Yes.

Q. I see. Now, Item 12, which refers to the general administrative, oh, I want to ask you this: You have set up, have you not, in your audit report, the method [1519] of your tabulation and the method in which you reached the days of revenue that the company was behind in their contract on March 31?

A. Yes, we have, it appears on pages seven and eight of the report.

Q. And do you, likewise, set down the days that your analysis disclosed, at least from your computations, it was delayed due to the Teamsters and Operating Engineers strike?

A. Yes, sir.

Q. It's all included in this report?

A. Yes.

Q. Now, turning to Item 12 which is indicated as a general administrative expense, the bill of particulars which you had when you made your examination and which is set forth with respect to this particular item at page eight of Exhibit 56——

The Court (Interposing): Before we leave Item 11, as I understand now, Mr. DeGarmo, your claim for loss of profits is simply a straight 10% mark-up on what you claim on all the other 16 items?

Mr. DeGarmo: Correct, sir.

The Court: All right.

Q. (By Mr. Etter): Have you had a chance

(Testimony of George E. King.)

to consider this, the new amended bill, with regard to Item 11 "Loss of [1520] Profits" on 49, Mr. King?

A. Well, again it's an estimate. I feel that from the accounting standpoint that the expenses, reimbursement of the actual expenses incurred, would have placed them in the position they were originally, as if the strike had not existed.

The Court: He has already covered that, I think.

Mr. DeGarmo: That is his view of the law.

Mr. Etter: Well, I want to know if he applies that now to the \$16,000.

The Court: All right, sure. I understood his testimony, anyway.

Mr. DeGarmo: You wanted to get the cost factor.

Mr. Etter: Well, that isn't what I heard him say.

The Court: All right, go ahead.

Q. (By Mr. Etter): Now, in Item 12 "General Administrative Expense," it was indicated in the original bill of particulars a claim of \$19,257, Plaintiff's Exhibit 49 under Item 12, now, claims the same amount. I notice that in your review you have determined nothing allowable and chargeable to that general administrative expense. Now, will you give us your reasons for your position, your analysis and audit in that regard on that item?

A. The amount claimed is a mathematical computation based [1521] on the same theory as Item 11 was originally computed in the amended bill of particulars. I felt at the time that the amount claimed



(Testimony of George E. King.)

for general administrative expenses should have been itemized, the accounting records should have been reviewed, and specific administrative and overhead items set forth, rather than a computation as set forth in Item 12.

Q. Could you find any specific items with regard to that account?

A. I made no attempt to identify any of the administrative expenses.

Q. Were any set forth chargeable to the contract that you found?

A. I am afraid that I can't say, I didn't look for them.

Q. You say that you do not concur in the method used? A. Yes, sir.

Q. Because of that reason, because it is what, a percentage calculation?

A. A percentage calculation on projected revenue or projected revenue expected.

Q. Projected revenue expected?

A. Yes, sir.

Q. I see. Now, Item 13, as I see it, there is no dispute on that item at the present, Mr. DeGarmo, as I compare these? [1522]

Mr. DeGarmo: Apparently not.

Mr. Etter: As I look at Item 14 I see no dispute on that.

Mr. DeGarmo: There is no dispute on that.

Q. (By Mr. Etter): Item 15 has to do with the maintenance of the General Electric Company office. In the bill of particulars it's indicated as \$547.30,

(Testimony of George E. King.)

and amended now in Plaintiff's Exhibit 49 to \$531.76, and I notice it was determined by your review to be \$414.65. Can you tell me whether or not the difference there is as a result of you computing on 76 days and the company on 98?

A. The difference is because it was computed on a 76 day basis.

Q. And there is no other reason than that difference? A. No, sir.

Q. Is that correct? A. No.

Q. Now, going to Item 16, the efficiency loss for labor and supplies.

The Court: Before we go into that, I will take a recess.

Mr. Etter: Fine.

The Court: Ten minutes.

(Whereupon, a recess was taken for a period of ten minutes.) [1523]

The Court: Let's see, were we on Item 12?

Mr. DeGarmo: 16.

The Court: Oh, 16? The last note I have is on 12.

Q. (By Mr. Etter): Now, you had occasion, did you, to consider the item which is indicated in 16, Mr. King, the efficiency loss for labor and supplies?

A. Yes, sir.

Q. And there was indicated in the bill of particulars, the amended bill of particulars, the total sum of \$92,835.29 when you made your examination, analysis and audit, is that correct? A. Yes.

Q. That item, I notice now in Plaintiff's Exhibit

(Testimony of George E. King.)

49, is substantially the same although it is \$89,370.98, you are aware of that?      A. Yes.

Q. And your computation indicated a reduced amount of \$38,291.94, is that correct?

A. Correct.

Q. Now, you have in your report a statement that the amounts set forth are the maximum amounts and do not make allowance for increasing cost of paving concrete as an increase item?

A. There is a typographical error there, first, that should be "Pouring concrete." [1524]

Q. Pouring concrete, I see.

A. In other words, the recognized fact that as the rise goes higher the pour goes higher, the costs increase.

Q. You are aware here from the testimony that the pour did not extend above the level of the ground?      A. Yes, sir.

Q. Now, did you determine the method of computation employed by the company in making this determination?      A. Yes, I did.

Q. And will you tell us what that was?

A. The computation is broken down into two factors, labor costs and material costs. The first section on labor is broken into two different areas, the labor cost at March 31 of '56, the date preceding the strike, and the cubic yards poured to that date, has been averaged to arrive at a cost of labor per cubic yard. The costs through September 30, 1956, have been totaled, subtracting the March 31 costs, arriving at labor costs for the period June 6, '56, through



(Testimony of George E. King.)

September 30. The concrete pour for the same period has been used, arriving at an average cost per yard. The difference between the average cost at September 30, 1956, and March 31, 1956, has been considered as excess cost of labor and applied to the yardage poured during the latter period in both areas, arriving at the increased cost of labor. [1525]

Q. I see. Now, did you determine the amount of concrete which was poured in both areas in your analysis? A. Yes, we did.

Q. And what did you find out with respect to that amount that was poured?

A. The concrete pour records disclosed that in area H 3429½ yards were poured. In area F, 4168 yards were poured.

Q. Now, did you also determine what the original engineering estimates of the pour were?

A. Yes, sir, we did.

Q. And they were what?

A. In area H the estimate was 3092 yards; in area F, 3450 yards.

Q. And did you determine that there had been an excess of pour over original estimates?

A. In both cases there was an excess of pour in area H, 337½ yards in area F, 718 yards, or a total of 1055½ yards.

Q. All right. Could you determine from your examination of the company's methods in determining part of this charge whether any consideration was given to the excess costs which were in-

(Testimony of George E. King.)

curring as a result of the excess pour over the engineering estimate?

A. The excess costs were adjusted only to the point as it [1526] compared to the costs at March 31. In other words, the excess yardage was included in the cost of labor, excess cost of labor computation.

Q. Did the company give any consideration to the excess cost incurred as a result of that pour?

A. As a reduction from their claim, no.

Q. They did not? A. No, sir.

Q. Now, did you also then compute the tabulations of excess labor costs on the same basis as was in the bill of particulars? A. Yes, we did.

Q. Did you make certain adjustments?

A. We did.

Q. And what adjustments did you make?

A. We excluded the cost of the excess pour on a computation basis by taking the actual pour figures from the period of March through September, arriving at cost per yard and excluding that amount for the excess pour during each month which was computed at a percentage basis.

Q. All right, did you convert the pour to the actual concrete delivered on the contract?

A. Yes.

Q. You did? And have you a table in there that indicates [1527] that?

A. Yes, on page eleven of the report it indicates the area H, and on twelve, area F.

Q. What was your purpose in setting out this

(Testimony of George E. King.)

table that you have set out here on page eleven of Exhibit 56?

A. I felt in their computation for the excess labor costs they had given no consideration to the excess pour which I felt was substantially over the original estimate approximately 15%.

Q. I see.

A. (Continuing): In excess of the original estimate, and that the excess costs of that excess pour was not a cost sustained or attributable to the strike period.

Q. And is that the basis of the tabulation which you set out?

A. Yes, the tabulation is computed on the same base as their computation, with that exclusion.

Q. With that exclusion? A. Yes, sir.

Q. And the result which you reached on that tabulation of that exclusion is indicated as being \$29,075.37, is that correct? A. For area H.

Q. For area H? Now, in the F area did you do the same thing? [1528]

A. The identical procedure was followed, yes.

Q. The identical procedure was followed? Which resulted in the amount that has been indicated in your tabulation on page twelve of Exhibit 56?

A. Yes, it totals \$9134.59.

Q. I see. Now, I see that you make a statement that "No statistics or cost data was available to determine the increase in such costs as would occur and produce the final figure in the above computa-



(Testimony of George E. King.)

tions," did you have reference to increased costs in the pour as it rose, by that statement?

A. Yes.

Q. All right, have you any other comments to make with respect to that item as a result of your analysis?

A. The material costs as claimed in the amended bill of particulars, we have excluded from our findings on the basis of the estimated cost, which was from the bid, in arriving at the excess supply costs. In other words, the total job materials for area F was \$38,557.01. The yardage poured in that area was 4168 yards computed at \$6.14, which was the unit cost for supplies in the original bid, extends to \$25,591.52, the excess is the amount claimed for excess supplies as a result of the strike.

Q. I see. Did you make a determination, too, with regard [1529] to the H area?

A. On the same basis, yes.

Q. On the same basis as you described made in the F area?           A. Right.

Q. Now, you say, "There is no basis other than that of using the engineering estimates of unit costs in computing the estimate of supplies that would have been used since it appeared in our review that these estimates were substantially less than would have been experienced under regular operating conditions, we have eliminated the amounts claimed for excess supply costs"?

A. Yes, sir. The meaning there is that we had no definite basis to use the \$6.49 rate in area H and

(Testimony of George E. King.)

the \$6.14 rate in the other area, which was the engineering projection of the unit cost on supplies.

Q. I see.

A. (Continuing): And the accounting records themselves, as it has been previously mentioned, it's very difficult to determine any specific accounting costs at any point on supplies since the bulk of the supplies may be bought at the beginning and continue on through the contract.

Q. I see. Now, in both of these estimates, as far as the company's estimate is concerned, and your estimate, they were all used on projected estimated figures, is [1530] that correct?

A. Yes, sir. These last two computations were on the engineers' bid projection.

Q. Now, you were in the courtroom and were aware of my questions having to do with Exhibits 22 and 24, which are projections. I have copies right here, Stan.

Mr. DeGarmo: I think those are 21 and 22.

Q. (By Mr. Etter): Excuse me, they are 21 and 22, which are projection estimates with respect to the various types of work listed in the column having to do with concrete, electrical work, insulation and architecture, and all that, do you not?

A. Yes, sir.

Q. And you heard the testimony indicating that, referring to Exhibit 1, at the stage the strike occurred at the end of March, although the engineering estimate indicated 80% of the pour to be completed, that there was only a percentage of that?

(Testimony of George E. King.)

A. Yes.

Q. And, likewise, a larger percentage, I think, with respect to Exhibit 22?

A. Yes.

Q. In the H area? Now, those factors were not, of course, considered in arriving at these amounts in the engineering estimates respecting Item 16, were they? [1531]

A. No.

Q. Beg your pardon?

A. I don't quite follow what you mean there.

Q. Well, I mean, actually, as I say, these were based on projected estimates, weren't they, your computations and the plaintiff's?

A. No, our computations on the labor costs were on actual figures from the accounting records.

Q. That is correct.

A. On supply costs the total cost was from the actual amounts from the accounting records.

Q. I see.

A. The amounts estimated as the amounts that would have been incurred for supplies we have eliminated, in other words.

Q. There is no way, is there, of telling what the actual cost of these items of the pour might have been prior to the strike, separate and independent?

A. Of supplies, no; no, sir.

Q. There is not, is there?

A. No sound method of doing it, no.

Q. I see. Is there a sound method, in your opinion, of determining these costs with regard to increased labor costs?

A. Yes, sir. [1532]

Q. And is that the fashion in which you worked



(Testimony of George E. King.)

them out?           A. Yes, it is.

Q. I see. Now, I think you said not as to material costs?           A. Not as to material costs.

Q. I see. Now, as to Item 17, as I understand the original amended bill of particulars is \$7072.64, which has been further amended in Exhibit 49 to \$6432.64, which is the exact figure determined by your review under Item 17?           A. Yes, sir.

Q. Is that correct?           A. Yes.

Mr. Etter: That is all.

### Cross-Examination

By Mr. DeGarmo:

Q. Mr. King, can we establish in basic working rules here, will you tell me, first, what were your instructions when you were assigned to make this examination and review?

A. To determine the costs that were incurred in the accounting records of the contract during the period of the strike.

Q. Were your instructions oral or in writing?

A. They were oral. [1533]

Q. You had no written instructions?

A. No, sir.

Q. Now, will you state that again, what those instructions were?

A. To determine the costs that were incurred by the contract during the period of the strike.

Q. Yes. Now, I noticed repeatedly, Mr. King, in your audit report that you used the word "con-

(Testimony of George E. King.)

tract," let me ask you in your audit which you have here, did you regard this contract for Hanford Works as a separate accounting unit?

A. Oh, from the extent that that was the records that were available to me for examination.

Q. Well, did you regard this project as being independent of Morrison-Knudsen Company as a corporation and organization? A. No, sir.

Q. You did not? A. No.

Q. All right, we will see, some of these will pass very quickly. Item 1, the difference between your figure in your determined amount and that as submitted by the plaintiff is occasioned solely, is it not, by the fact that you use a 5.8 insurance and taxes figure, whereas, the plaintiff used 5.65? [1534]

A. Yes, sir.

Q. In Item 2 which appears on pages two and three of your report, as I understand it, the difference in the first figure which is \$282.48 and \$339.73 is occasioned solely by your use of the 76 days and the plaintiff's use of a 98 day period.

The Court: I didn't just follow that, Mr. DeGarmo.

Mr. DeGarmo: On page two, Item 2, the first item, his determination is \$282.48 and the plaintiff's claim is \$339.73.

The Court: Oh, I see, yes.

Mr. DeGarmo: And I asked him if the only reason for the difference is the 76 and 98 days, to which he answered "yes."

The Court: Yes.

(Testimony of George E. King.)

Q. (By Mr. DeGarmo): Now, in the exhibit and in the bill of particulars on that item, Mr. King, there was an item of rental of office equipment and an item of rental of engineering supplies, is that correct? A. Yes, sir.

Q. And in your audit you have thrown those out completely as not worthy of consideration?

A. As being expenses not incurred on the contract accounting records.

Q. Well, now, let me understand, Mr. King, were you sent [1535] out there just to determine whether there were costs on the record, was that the only thing you were going to determine?

A. That was my basis of the examination, the actual costs that were incurred.

Q. Well, if there was no cost figure on the record, then from your standpoint as an accountant, you discounted the item? A. Yes, sir.

Q. And is it your position as an accountant that if we have a whole room full of furniture here that is being used for courtroom purposes and it has been fully depreciated out so that the owner of it has no costs on his records, that it is worth nothing to him.

Mr. Etter: That is not a proper hypothetical question.

Mr. DeGarmo: It is not a hypothetical question at all.

Mr. Etter: It is, there is not a proper foundation in any of the testimony laid for that type of cross-examination.



(Testimony of George E. King.)

The Court: Well, I think it would be of value, of use rather than value of the property. I will permit him to answer that.

A. Well, it would have a value to it, yes, as an asset. [1536] It may not have any operating expense since it had been fully depreciated out.

Q. (By Mr. DeGarmo): But as an accountant you would not consider that as entering into the profit or loss picture?

A. If it were fully depreciated out, no.

Q. It would just be a nonentity from an accounting standpoint? A. Yes.

Q. But it does have a use value, does it not?

A. Very definitely.

Q. To the owner of it, and it has even a greater use value if it is fully depreciated, does it not?

A. I don't understand what you mean there.

Q. Well, if it is fully depreciated, he has no costs to charge off against the profit, does he?

A. That is correct.

Q. So that he makes a profit on that item?

A. Yes.

Q. With no offsetting expense item?

A. Correct.

Q. Now, in this case, as I understand from reading your audit report, you have found that all of the furniture had been transferred onto this job at a ten dollar valuation? [1537] A. Yes.

Q. That was the gross figure? A. Yes.

Q. And it had been transferred out at ten dollars,

(Testimony of George E. King.)

so as far as from an accounting standpoint, it was zero?

A. On the items set forth in the bill of particulars, yes.

Q. And it was upon that basis only that you just threw the item out from an accounting standpoint?

A. Correct.

Q. And that was the only reason?

A. Yes, sir.

Q. Similarly, Mr. King, with reference to Item No. 3 which has to do with transportation to protect property during strike, which appears on page three of your report, Defendants' Exhibit 56, you eliminated that item entirely for the reason that you did not find that the particular trips had been charged in a particular category as such, upon the records of the corporation? A. Correct.

Q. And this does not, your examination did not attempt to determine whether those trips had, in fact, been made or not? A. No.

Q. You did find that during the period of the strike there [1538] was a cost of oil and gasoline and similar items? A. Yes, sir.

Q. Which would indicate that there was some automotive equipment being operated?

A. Yes.

Q. Will you next refer, Mr. King, to Item No. 4, under "Director of Labor Relations Costs" and refer to the amended bill of particulars, and I will ask you if it is a fact that the difference between the figure which you determined by your review and that

(Testimony of George E. King.)

as indicated by the bill of particulars, is the amount of Mr. Lee Knack's salary allocable to the work that he did in connection with the settlement of the strike?      A. Yes, sir.

The Court: Let's see, now, this is Item——

Mr. DeGarmo: Item 4.

The Court: Four, yes.

Q. (By Mr. DeGarmo): And what was the amount of that salary which you eliminated?

A. \$756.23, which appears on Exhibit A of the amended bill of particulars.

Q. Well, now, Mr. King, isn't it a fact that that salary was either chargeable as a direct cost to this project or else it is chargeable as a part of administrative expense? [1539]      A. Yes, sir.

Q. It would have to be in one category or the other?      A. One or the other, yes, sir.

Q. Well, now, while we are on that subject of "Administrative Expense," I want to skip to Item 12, which appears on page eight of Plaintiff's Exhibit 56, and am I correct in my understanding of your testimony that you eliminated general administrative expense entirely from your approval upon the ground that there was no direct charge of general administrative expense to this particular project?

A. It was eliminated on the basis that the amended bill of particulars did not itemize those amounts. It's eliminated on the basis of the theory presented in the bill of particulars in computing that amount.

Q. Well, you did find, though, didn't you, Mr.



(Testimony of George E. King.)

King, that there was a general administrative expense charged to this project?

A. As I have stated in the report, we made no attempt to determine those amounts or to determine if there were such amounts.

Q. You did not even look to see if there was a charge for general administrative expense?

A. I can say that I recall seeing them, but I paid no particular attention to them, though. [1540]

Q. But you know that there were some there?

A. Yes.

Q. But you just paid no attention to them?

A. Right.

Q. Well, now, you recognize, do you, Mr. King, as an accountant, that there was general administrative expense in connection with this project?

A. Yes, sir, there would be.

Q. You don't have any question about that in your mind? A. No.

Q. Well, now, will you explain to me, Mr. King, just how you as an accountant would go about allocating and charging to this particular project, itemized, as you say you were looking for it, the general administrative expense of the Boise office and the district office of Morrison-Knudsen Company?

A. It's a lot of theory.

Q. I am very interested in your theory.

Mr. Carey: Well, let him answer.

A. The actual administrative expense that would be incurred on the job during this period, the administrative and overhead and fixed charges, other

(Testimony of George E. King.)

than administration that would be incurred on the job.

Q. (By Mr. DeGarmo): Well, how would you itemize them as you say you were looking for them?

A. The actual expenses that were incurred during this period.

Q. All right, we have a president of the corporation and we have about seven vice-presidents, and we have a secretary, and we have a comptroller, and we have engineers, a chief engineer and a number of other engineers in the district office, we have a district manager, a vice-president, an office manager; how would you go about allocating the salaries of those people to this particular job on an itemized basis?

A. Well, probably it would be impossible on an itemized basis unless there was some method or theory from the Boise office in which they made those charge-backs to their contract.

Q. Well, now, as a matter of fact you sat here and listened to the testimony in this case and learned that there was a method of allocating, did you not?

A. I may have missed that.

Q. Well, didn't you hear testimony concerning a 3% of anticipated revenue for general administrative expense?

A. I don't recall hearing that, no.

Q. Well, when you saw these charges for general administrative expense upon the company's records, and knowing that there was a general administrative expense item which you had been charged to investi-

(Testimony of George E. King.)

gate, didn't you [1542] look at that to determine what basis, the general basis, the general administrative expense had been charged to this job?

A. I do recall administrative expenses being charged to the job from Boise. I don't know whether I made a note of it at the time or not.

The Court: Is this one item the \$756, Lee E. Knack's?

Mr. DeGarmo: No, this is the Item 12 of \$19,257. Mr. Knack's salary is included in that item someplace.

The Court: Well, what I thought I had here is that I thought we were talking about Item 4. Did you place that item under general administration, then. You are practically together on the rest of this Item 4 up to two cents?

Mr. DeGarmo: We are together on Item 4, but I skipped to Item 12.

The Court: Oh, I see. You are talking about Item 12, then?

Mr. DeGarmo: I am talking about the general administrative expense, Item 12, which appears on page eight of this report and which Mr. King eliminated entirely.

The Court: Yes, I know.

Q. (By Mr. DeGarmo: You were looking to see if you had some references? [1543])

A. I have made no notes in my work papers of the charges.

Q. Well, Mr. King, as a matter of fact now, as



(Testimony of George E. King.)

an accountant, isn't it true that where you have a branch office or a district on a various project type of organization in a corporation, the only method of allocating, the only practical method and only method sound from an accounting standpoint of allocating administrative general expense, is upon some percentage basis, either of dollar volume, or some such arrangement?

A. It would be one method of making an allocation of administrative overhead, yes.

Q. Well, do you know of any other way where you cannot determine what particular dollar volume of a president's salary, and the other salaries, and the other general expense, is allocable to a particular project?

A. The form of allocating any administrative expense can be based on several factors, one would be the volume of business.

Q. Yes, that is one I suggested.

A. One would be the payroll distribution within an area; another could be fixed charges; and also I have seen just arbitrary splits.

Q. Pardon me?

A. Just arbitrary distribution of income to branches on the basis of the number of branches or the number of [1544] contracts going at one time.

Q. But, under no circumstances in that type of operation can you say, "President's salary, so many dollars; vice-president, so many dollars; and so forth?"

A. No, sir.

Q. You have to take your general administrative

(Testimony of George E. King.)

expense as a total expense and then allocate it upon some formula? A. Yes, sir.

Q. But in this case, because you didn't find that, what did you decide to throw it out entirely for, that is what I am trying to understand, this itemization that you spoke of; what type of itemization were you looking for?

A. The charges coming out of the Boise office.

Q. Well, you have already said you did see some general administrative expense charge there?

A. During this period.

Q. Well, what item is that?

A. This item is eliminated on the basis of the computation made. We made no attempt to determine what was the administrative expenses, we are taking exception to the methods you have used in computing it.

Q. You just take exception to the method but you don't suggest any other way? [1545]

A. That is right.

Q. In Item 5, Mr. King, in your determination of \$389.16, do you have your work sheet there that tells how you arrived at that by months?

A. Yes, sir.

Q. Can you tell what amount you allocated or established as the charge for March?

A. Which would be the April 1st billing, 1956? Total bill was \$194.82. The toll calls appearing on that bill totaled \$182.99, which were all dated prior to the strike. The rental of \$11.83, the balance of the amount was the rent for the month of April and

(Testimony of George E. King.)

considered as an amount during the strike. The May 1st bill totaled \$237.92. The base rent for May of \$11.83 was considered as an expense during the strike. Toll calls were from March 12 to April 24, totaling \$226.09. \$53.35 of those calls were prior to the strike, \$172.74 were during the strike. June 1st billing totaled \$120.62. The \$11.83 base rate was split fifty-fifty, one-half before the strike, one-half following the strike, \$5.92. The toll charges ran from April 24 to May 14 for all during the period of the strike, the June 1st.

Q. In what amount? A. \$108.79. [1546]

Q. \$108—— A. \$108.79.

Q. Thank you.

A. The July 1st billing totaled \$226.55, being the base rent of \$11.83 after the strike for the month of July toll charges from May 15 to June 14, totaling \$214.72, of which \$138.77 was after the strike. \$75.95 was before the strike, and a charge of \$12.50 made in June, 1956, for instrument rentals and toll calls of \$20.24, or a total of \$32.74, of which \$2.10 of the June rental was during the strike, the balance of \$30.64 being after the strike.

Q. Thank you. Now, is that last item that you gave, Plaintiff's Exhibit 44, was it taken off of 44?

A. Yes.

Q. I want to refer next, Mr. King, to your Item No. 8 which appears on pages five and six of Plaintiff's Exhibit 56. Did you reach a determination, Mr. King, that the rentals which were, as you say, established by the Boise office and which you used



(Testimony of George E. King.)

in setting up your determination figure, represented the actual cost or depreciated cost of the equipment in question?

A. There was no such information to make such determination available.

Q. In other words, you do not know at this time and you did [1547] not know then whether those figures were costs or whether they were something else? A. No, sir.

Q. You just took the figure because it was issued in a part of the manual as the M-K rental charge to a project?

A. The amounts I computed were actual billings to the job on their monthly rental schedule.

Q. Well, did you project those toward a period?

A. Yes, sir.

Q. Now, these billings, these amounts were not billed during the strike period, were they?

A. No, sir.

Q. So, you took the billings before the strike?

A. Right.

Q. And projected those over the strike period, isn't that correct? A. Yes, sir.

Q. Now, if there was any equipment which had not been billed and which was received during the strike period that would not appear in your computation?

A. I took the items that were presented in the bill of particulars, specifically.

Q. Well, did you find that all items in the bill of particulars had been billed?

(Testimony of George E. King.)

A. Yes, sir. [1548]

Q. To the project?

A. Yes; we identified them all.

Q. Had been billed to the project prior to March 31?

A. Prior or during the strike, yes, sir. We found the billing on all of them.

Q. You found the billing on all of them? Now, if you were considering this as a company operation rather than a contract operation, Mr. King, on your theory would you not have to first determine whether those rental charges represented costs, or something other than costs? A. Yes, sir.

Q. But you did not do that?

A. Such information was not available for me to do such.

Q. Well, then, isn't it a fact that as far as this item is concerned you were purely taking a contract viewpoint rather than a Morrison-Knudsen Company viewpoint, considering it as an operation rather than as a contract?

A. Considering it as a contract cost, yes.

Q. And if it did not represent actual cost, then, to that extent, your determination would be in error, would it not, from the company's standpoint?

A. Yes, sir.

Q. As I understand it, Mr. King, on the so-called minor items of equipment where it had been charged to the job [1549] at ten dollars, you used the ten dollar figure and had you considered that as the total cost?

(Testimony of George E. King.)

A. Only from the standpoint that if that had been expense in the contract, that would have been the total cost, the maximum cost, that the contractor would have sustained on that equipment.

Q. Well, again I want to ask you if you were viewing this as a contract item or as a Morrison-Knudsen Company item?

A. As a contract cost.

Q. Well, but was that necessarily the cost to Morrison-Knudsen Company of that item?

A. No, sir.

Q. And you did not attempt to make any determination whether it was or was not, did you?

A. Again, there was no way of making such a determination.

Q. So that if the cost to Morrison-Knudsen Company was not ten dollars but some other figure, that would affect your computation, would it not?

A. On the basis of minor equipment?

Q. Yes, sir.

A. I don't believe so, from the standpoint that the costs of any minor equipment would have been absorbed by other contracts. In other words, it would be immaterial whether it was in this contract or other contracts [1550] of Morrison-Knudsen.

Q. Well, again, do I understand from your viewpoint as an accountant, Mr. King, that if all of the minor items of equipment had been completely depreciated on the company's records, that it had no use value to this plaintiff?

A. No, sir; I am not saying that.



(Testimony of George E. King.)

Q. You do recognize that material capable of use has a use value, do you not?

A. Very definitely.

Q. But you do not recognize from an accounting standpoint it can be considered in determining cost?

A. Under the method that was being used in this contract.

Q. Yes, and because some other project had paid for that equipment and it was charged to this particular project at ten dollars, you considered that it had no cost but ten dollars as far as this project was concerned?

A. There would be no information available to me to determine what the cost of that minor equipment was.

Q. Yes; you did find in the case of minor equipment that they had purchased new \$631.95 of equipment?

A. Yes, sir.

Q. Is that correct? And you also found that there were sufficient charges on the books at ten dollars each to total \$220? [1551]

A. Yes, sir.

Q. So that as far as your audit showed, the total expense that Morrison-Knudsen Company had as far as this project was concerned for all of the items of minor equipment listed on Exhibit 29 was \$831.95?

A. That is right.

Q. Well, now, you knew as a matter of fact, just from general knowledge that that was not true, didn't you, that that material had cost much more than that?

A. Not from general knowledge. There was noth-

(Testimony of George E. King.)

ing available to me that would prove that it had cost more than that.

Q. Let me ask you, have you ever had any experience in construction accounting before?

A. Yes, sir.

Q. Have you ever worked on a construction project?

A. From the standpoint of auditing it.

Q. Do you have any idea of what construction equipment costs? A. Yes.

Mr. Etter: I don't think that these questions are material that he is going into now, "Have you any idea what construction equipment costs," I don't see that is material here.

Mr. DeGarmo: It's quite material.

The Court: Well, I will overrule the [1552] objection.

Q. (By Mr. DeGarmo): Mr. King, I do not understand as of now your treatment of the owned concrete forms. What is the difference between your computation and that as used by the company. You came out with \$2,317.50 and the company had \$2,781.

A. I believe it's based on footage.

Q. Well, is that one of the items that was corrected in this elimination? A. Yes, sir.

Q. That plus the rented concrete forms and the scaffold was correct then, was it not?

A. Yes, sir.

Q. So that there is no disagreement between us now on those three items? A. No.

The Court: Let's see, that is 8-A?

(Testimony of George E. King.)

Mr. DeGarmo: Yes; that was the amendment on the second page of Exhibit 29 that eliminated the question concerning those three items.

The Court: Oh.

Q. (By Mr. DeGarmo): You have already testified that the difference between your computation and that of the plaintiff with respect to interest on investment was caused by two factors: In the first place, you used the 76 instead of a 98-day method, is that correct? [1553] A. Yes, sir.

Q. And, in the second place, you selected a longer or a different period of time for the purpose of determining average investment?

A. Yes, sir.

Q. You are of the opinion, as I understand it, that your selection of months is a better selection than that of the plaintiff?

A. From the standpoint that it actually covers the strike period. My computation began on March 31; the invested capital, March 31, at the Boise office. The computation in the amended bill of particulars starts on April 30.

Q. Yes, as I understand it, you are not able to tell us at this time if you extended your method to the 98 days what the difference would be?

A. No, sir, I haven't made that computation.

Q. Now, let us turn for a moment, Mr. King, to the question of profits or mark-up. Do I understand that it is your theory if a contract is losing money, that then it should have no profit on anything it does because it is already losing, is that your theory?



(Testimony of George E. King.)

A. I don't follow you there.

Q. Well, let's assume that the contract is a losing contract and the contractor undertakes to perform \$100,000 worth of extra work, is it your theory that he should [1554] perform that for nothing because he is already losing money, and therefore there is no profit in the contract anyway?

A. It would depend on the basis of the contract. If it were a flat bid contract and he was going to have a set or specified profit.

Q. Well, you stated, I believe, that your theory was that if you recovered cost, that then you were all through, that is all that anyone is entitled to in a breach of contract case, is cost?

A. In this instance, yes.

Q. Well, why in this instance?

A. This was a bid price. The profit is not affected on this contract by a percentage computation if all costs or excess costs would be returned to the Morrison-Knudsen Company.

Q. All right, I want to ask you this, Mr. King: If you have a million dollars worth of equipment and supervisory personnel that is forced to sit idle for 76 days when there is other work which that million dollars worth of equipment and that supervisory personnel could be performing, is it your theory that there is no damage to a party if he is forced to sit idle for 30 days or 60 days or 90 days?

A. No, sir, there would be damage. [1555]

Q. There would be damage, wouldn't there? Well, now, is that damage just the cost at that time

(Testimony of George E. King.)

or is the possibility that he might make a profit on that million dollars worth of equipment worthy of some consideration?

A. It would depend on the basis of what his method of making a profit was.

Mr. Etter: Well, just a minute, I will object. Is your question, counsel, he could be making a profit on some other job, is that what you are asking Mr. King?

Mr. DeGarmo: I certainly want to know what his theory is.

Mr. Etter: Loss of profit on another job other than this one, that is what you are asking him?

Mr. DeGarmo: I am asking him if it is his theory that cost is all that anybody is entitled to if you are on a job that is losing money, if that is your theory?

Mr. Carey: Well, he objected not long ago because he said that very same kind of question was a question of law and not a question of accounting.

Mr. DeGarmo: Well, the Court overruled my objection, I am just pursuing it now.

The Court: All right, go ahead.

A. Only in this case do I take that viewpoint from the standpoint of that it was a set price.

Q. (By Mr. DeGarmo): Well, at the time that you were out [1556] there you have told your counsel, or counsel for the defendants here, that this contract under no circumstances could have made a profit, is that correct?

(Testimony of George E. King.)

A. As the facts and figures of the accounting records show, no.

Q. Well, were you advised of this claim which was in issue at the time?      A. No, sir.

Q. You did not know of that at the time?

A. No.

Q. Do you recognize that, Mr. King, in attempting to prove damages in a case of this kind that it is not always possible to prove with mathematical certainty all damages that a party has incurred by reason of a situation?

Mr. Carey: That, also, is a question of law and the burden is on the plaintiff, and must be, any question should be resolved against the plaintiff.

The Court: Well, I will sustain the objection on that. I think it's probably a question of law.

Q. (By Mr. DeGarmo): Did you approach this examination from the standpoint that you were told to find only cost and nothing more?

A. Yes, sir.

Q. Now, who told you to do that?

A. The costs that were sustained in conjunction with the [1557] items claimed.

Q. Well, who told you that?

A. Mr. Etter, counsel for the Engineers.

Q. Well, then, as far as you were concerned there was no reason to audit the question of loss of profits at all because you already had been told to not consider it, isn't that true?

A. No, I don't believe so.



(Testimony of George E. King.)

Q. Well, if you were told that cost was all you were to look for, lost profits is not a cost, is it?

A. No, it is not.

Q. Well, then, were you correct in telling me that what you went out there looking for was costs and nothing more, and that you were told to look for nothing more?

A. That was the basis of my examination.

Mr. Etter: I will answer that question, if you want me to, Mr. DeGarmo, if there is any question in the Court's mind of any theory.

Mr. DeGarmo: I don't think anybody asked you for an answer.

Mr. Etter: Well, you are asking what I said to him, why don't you ask me?

Mr. DeGarmo: I am asking the witness. If you want to be sworn, I will examine you.

Mr. Etter: Why, certainly, I will be glad [1558] to answer anything that you have to inquire of me.

Q. (By Mr. DeGarmo): Let's take the next item, Mr. King, your Item 16. Well, first, before we leave 11, since this enters into some of your other testimony, I want to just question you for a moment about the computation that you have made here with interest. Is it true that according to your mathematical calculation based upon your average daily revenue that you concluded as shown on page eight of this Plaintiff's Exhibit 56, that although the strike actually existed in status quo for 76 days, that the loss in time was only 58?

A. At October 1st, 1956, that was the delay at

(Testimony of George E. King.)

that point. That would be attributable to a strike or other delaying factors.

Q. Well, now, Mr. King, could I have Plaintiff's Exhibit 23, please? You know, as a matter of fact, do you not, that income is not received on an average daily basis on this type of contract?

A. That is right.

Q. You do recognize that absolutely, do you not?

A. Yes.

Q. And you also know if you examine either of the charts, 21, 22 or 24, that that conclusively shows that income is not received on an average daily basis, do you not? A. Yes.

Q. So, when you assume an average daily basis you are [1559] assuming something that is contrary to fact, isn't that true?

A. I don't believe I follow you there.

Q. In other words, if you assume for the purpose of computation, an average daily revenue, you are assuming something that is contrary to the fact of this particular project?

A. Only it is not an assumption on my part from the standpoint that it was based on the actual figures in the records of the accounting.

Q. Yes, but you know, as a matter of fact, that income was not received on any average daily basis, don't you?

A. I am not saying that income was received on any average daily basis, I am computing the average daily basis that it was projected on and actually received on.

(Testimony of George E. King.)

Q. Yes, but it was not received on an average daily basis, was it, it was received on an actual basis of progress which was not average at all, that is correct, isn't it? A. That is right.

Q. So that in the month of March, for instance, the revenue was \$120,487 here, just follow this exhibit, the revenue was \$120,487, and in December the revenue was \$14,610. Now, if you averaged those two, that would not be the way the revenue would come in, would it, per day? [1560]

A. At that point it would be an average that the revenue had been received.

Q. Had been received, but progress is dependent upon, or revenue is dependent upon progress, is it not? A. Yes.

Q. And the amount of progress each day determines upon the revenue that is payable at the end of that day, does it not? A. Yes.

Q. And if you perform ten times more work on one day than you do on another, you do not receive the same compensation for both days, do you?

A. No, sir.

Q. And in this case that was the way that the revenue was received, was it not, was in accordance with the actual progress of the work?

A. Percentage of progress completed, yes.

Q. Yes, and that percentage of progress was not the same each day, was it?

A. It was not computed on a daily basis.

Q. Well, the revenue was not the same because the progress was not the same, was it?



(Testimony of George E. King.)

A. Probably not.

Q. Well, you know it was not, don't you?

A. You can't have a revenue production per day, that isn't [1561] any computation that was made per day.

Q. Let me ask you this: You know that the revenue was not even average per month, let alone per day, isn't that true, and doesn't the exhibit in front of you tell you that?

A. You mean from the standpoint of the billing that was made to the AEC was not on an average per day?

Q. Yes, sir.

A. No, sir, it was not on an average per day.

Q. And it was not on an average per month. was it? A. No.

Q. It was on the actual progress of work to that day, or to the end of the month?

A. To completion.

The Court: Were progress payments made monthly? I assume they were.

Mr. DeGarmo: Yes, sir.

Q. So that when you use an average daily revenue you are entirely disregarding progress, are you not?

A. No, sir, that wasn't average daily revenue that would represent progress on the daily basis.

Q. At the end of that period, would it not?

A. Yes.

Q. Well, now, wait a minute. Let's go back: You say that the average would represent it at the end of that time, [1562] that isn't true, is it?

(Testimony of George E. King.)

A. I believe so.

Q. Well, now, isn't it a matter of fact that the total revenue as of a particular day is dependent upon the amount of work that has been done up to that day, isn't that true; I thought we had gone over this.

A. Yes, we are talking about two different things, I believe.

Q. Yes, you are talking about revenue as distinguished from production, aren't you?

A. Yes.

Q. But production is dependent, or revenue is dependent solely upon production in this type of contract?      A. Correct.

Q. So that you do not receive the same revenue for every day at work?

A. No, sir. In other words, you haven't the same average for every day, which the chart shows.

Q. But you used it as an average figure, did you not, for your determination?

A. Based upon your own projections, yes, as being an average at that point per day revenue earned.

Q. I want you to tell me, to work this out for me; take the period of March 22, 1956, and work out the figures for me now and tell me how you arrived at 44 days behind [1563] schedule at that date?

The Court: What was this date, Mr. DeGarmo?

Mr. DeGarmo: March 22, the date the strike started. He, in accordance with his report, says that

(Testimony of George E. King.)

the job was behind actual scheduled progress 44 days at that time.

A. At the end of March.

Q. (By Mr. DeGarmo): No, I want March 22.

A. I have no computations that would show as of March 22,

Q. Well, why didn't you use March 22?

A. My computations were made on the basis of the projected revenue as compared to your charts that you had projected in the delays of the time.

Q. Well, our charts were prepared on the basis of March 22, were they not, not March 31?

A. March 22, yes.

Q. There was no work performed between March 22 and March 31, was there, Mr. King?

A. I believe there was.

Q. What?

A. I was told that they were pouring at that time and that there was certain other work going on. Now, this is hearsay.

Q. Yes, that this company was pouring concrete with cement finishers and with cement masons?

Mr. Etter: I will object, I don't think we have to [1564] have a speech. If he is wrong, why doesn't he tell him? He said it was hearsay, why does counsel have to make a speech about it?

Mr. DeGarmo: I am sorry, Mr. Etter, if I made a speech I didn't intend to.

Mr. Carey: That was an inch of speech.

The Court: Well, go ahead.

Q. (By Mr. DeGarmo): I am asking why you



(Testimony of George E. King.)

didn't use the March 22 date, which was the date of the strike and which the chart which you have in front of you, Plaintiff's Exhibit 24, states that the behind schedule progress on March 22 was 18 days?

A. Because of the fact the basis of our projection here is on your monthly scheduled revenue, which is on a monthly projection. The revenue received is on a monthly basis of revenue received.

Q. Well, Mr. King, if in that last ten days of the month you received 90% of the revenue for that month or you performed the work which resulted in 90% of the revenue for that month, your calculation would be completely off, would it not?

A. No, sir, I don't believe so.

Q. Well, now, if progress is directly related to income and you performed 90% of the work for the month in the last ten days and you used the month end figure only [1565] as an average, your computation would be off as of March 22, wouldn't it?

A. If I understand you, you are saying the 90% of the completion would be done?

Q. In the last ten days, yes.

A. Oh, on that basis, yes.

Q. It would be off, yes.                      A. Yes.

Q. Well, now, you have disregarded, then, the interim period of March 22 in making your computation and you took a period ten days later, did you not, isn't that true, that you used March 31?

A. Yes, in computing the computation.

Q. I want to refer next, Mr. King, to Item No. 16. If I understood your testimony, one of the prin-

(Testimony of George E. King.)

principal differences that you have with the plaintiff on Item 16 is that you say it disregarded the cost of overage pour in its computation, is that correct?

A. Yes, sir.

Q. How did you determine, Mr. King, that there was an excess cost of pouring the additional yardage?

A. I don't follow you on your question.

Q. I am asking how you arrived at the definite accounting conclusion that there was a cost of pouring the additional quantity of concrete. Now, you have said that [1566] from your standpoint we have to have facts and figures to support anything, from an accounting standpoint. I am asking you, as an accountant, how you arrived at the conclusion from the figures that there was a cost of any kind in connection with the excess quantity of concrete?

A. By basing the actual pour to the estimates, original estimates, arriving at a percentage of the excess pour and applying that over an equal basis throughout the life or throughout the continuation of the pour.

Q. Well, now, aren't you indulging as an accountant in certain assumptions there, Mr. King?

A. Yes, sir.

Q. Not based on facts or figures?

A. The computation is based on facts and figures, the application.

Q. The mathematical calculation, yes, but the reason for the calculating is neither based on fact or figure in the company's records.

(Testimony of George E. King.)

A. The basic facts are direct from company records.

Q. The total costs, yes.

A. The total costs, yes, and total concrete pours.

Q. And total concrete pours, but whether there was any excess costs in connection with the pouring of that additional quantity you are merely assuming, are you [1567] not?           A. Yes, sir.

Q. Now, if, as testified by one of the witnesses here yesterday, I believe, in the transportation of this concrete from a point approximately ten miles distant to the site of the work itself, there occurred a shrinkage in a considerable amount in the quantity of cement, the yardage of which was determined at the point of discharge into the truck, would there necessarily be an additional cost in connection with the pouring of that concrete?

A. I again don't quite see what you are asking.

Q. Well, let's say that the yardage itself is determined at the point of discharge into the conveyor truck which takes it to the point of discharge into the site of the work, and that in that transportation a shrinkage occurs through settlement of the cement and the elimination of air bubbles, and so forth, so that when you get to the site of the work instead of pouring a 25 yards of concrete you only pour 24 yards into the forms, and by reason of that you increase the number of yards which you buy, not what you pour, but that you buy; is there necessarily an increase in the cost of the pour itself?

A. Just offhand I would say probably not.



(Testimony of George E. King.)

Q. And if you are pouring concrete in a building, the size of [1568] which does not change, it's the same building and you just have to put more mortar in between the forms and pay for more mortar, but you put the same number of ultimate yards at the site of the work, there would be no increase in costs, would there, other than the cost of the concrete itself?

A. Well, not necessarily, the additional pour would result in increased costs because of cost elements that would be required there to make up for that additional pour.

Q. Well, what in particular now, other than the cost of the concrete, would you say there would be there?

A. Your labor costs of pouring that concrete.

Q. Well, you are pouring only the same amount of concrete that you originally contracted to pour, except you are paying for a larger amount?

A. But it is also costing more to pour that, from the standpoint of time element.

Q. Well, why, Mr. King, when you are pouring at the site of the work the same quantity that you originally contracted to pour, you only pay more for the concrete because at the site where you get it it is a larger yardage, where is your increased cost that you are talking about?

A. It would be in your labor costs of pouring that.

Q. Well, all right. [1569]

A. Let me explain what I mean. If in your ex-

(Testimony of George E. King.)

ample there, you have a shrinkage, say, from a 25 yard load to a 20 yard load, all right, every fifth trip you would have to make a sixth trip. You would have the labor for that sixth trip.

Q. Aren't you assuming that the contractor is paying for the cost of hauling?

A. No, you have men there that are making that pour. I am not assuming anything as to what expenses occur, maybe he is not incurring any if he is doing his own hauling. In other words, with an increased pouring you would have increased costs, I don't see how you would get away from it.

Q. Have you ever poured concrete on a job of this kind?           A. No, sir.

Q. You wouldn't know, then, that the truck haul is continuous into a hopper and that the men taking it away from the hopper are the same men all the time?           A. From actual experience, no.

Q. All right. Now, Mr. King, in your computation you have assumed the same cost of pouring every additional yard of concrete purchased or concrete poured, no, of concrete purchased that was paid for the estimated, or that was computed for the estimated quantity, have you not? In other words, if the estimated quantity was 1200 and [1570] there was purchased 1250, which shows as poured, you have computed each yard of that at the same average cost?           A. Yes.

Q. And, then, have set over a portion of that average cost as against the excess pour?

A. Yes.

(Testimony of George E. King.)

Q. So that it is bearing the same cost uniformly or every yard is bearing the same uniform cost, let's put it that way.

A. On a monthly basis.

Q. Yes, then Mr. King, if a portion of this concrete is merely used for fill, would that affect the average cost that you are using here?

A. I don't know that I could answer that.

Q. Well, you recognize, do you not, Mr. King, that in connection with labor costs the forming labor cost is a part of the concrete pour, do you not?

A. Yes, sir.

Q. And if you don't build any forms, that would seriously reduce your labor costs, would it not?

A. Correct.

Q. You did not take into account either of those factors in your determination, did you?

A. No. [1571]

\* \* \*

L. GORDON LEE

called and sworn as a witness on behalf of the defendants, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. L. Gordon Lee.

Q. Where do you reside, Mr. Lee?

A. In Spokane.

Q. And what is your occupation or profession?



(Testimony of L. Gordon Lee.)

A. Certified public accountant.

Q. And how long have you been a certified public accountant? A. Since 1946; 1943, pardon me.

Q. 1943? How long have you been engaged in accounting work? A. Since 1929.

Q. Since 1929? And what was your training, Mr. Lee?

A. Business college and my own study on the side.

Q. And are you associated with the firm of Morris and Lee? A. Yes. [1574]

Q. Lee and Company? A. Yes.

Q. And what is your status, are you one of the partners? A. A partner.

Q. And did you work in the review and the compilation of the audit report indicated as Exhibit 56, in conjunction with Mr. King?

A. Yes, conferred with him.

Q. And did you review that audit report?

A. Yes.

Q. And your name is signed, is it not, as one of the partners, Morris, Lee and Company?

A. Yes.

Q. Now, I want to ask you just with respect to one item, if I may, Mr. Lee, loss of profits, Item 11, contained as \$64,190 in the amended bill of particulars, now reduced to \$16,592. Have I discussed that matter with you, a determination of that matter?

A. Yes.

Q. And, likewise, has Mr. King, with respect to

(Testimony of L. Gordon Lee.)

his analysis and the adjustment he made that he felt none of that was allowable?           A. Yes.

Q. I see. Now, in your discussion and review, do you find or would you allow any loss of profit on this type of [1575] contract?           A. No.

Mr. DeGarmo: That, I certainly think, is objectionable.

Q. (By Mr. Etter): Did you find any loss of profit now?

Mr. DeGarmo: Just a minute. I ask that the answer to that question be stricken and that the answer is objectionable on the ground that it asks for a ruling by this witness on a legal question.

The Court: I think I would allow it on the same basis I did with the other witness, that is, in his expert opinion as an accountant, if it should not be allowed.

Mr. Etter: That is right.

The Court: That is what you had in mind?

A. Yes.

The Court: Well, I will let it stand on that basis.

Q. (By Mr. Etter): All right. And will you explain why not, in your opinion?

A. In my opinion, in this type of contract it's a fixed bid and the recovering of the items claimed in the bill of particulars would put the company in the same position as though a strike had not occurred, and you can't compare this type of operation to a merchandise business, for example, where you would terminate the sales [1576] that would

(Testimony of L. Gordon Lee.)

occur during a strike period. So, the profit would be exactly the same when they had recovered their costs as though no strike had occurred, the profits would be the same, or loss.

Q. You are assuming this was a fixed bid of a million eight hundred and some odd thousand dollars? A. Yes.

Q. And you heard the testimony that there is included direct cost 15% overhead on direct cost, plus 10% profit? A. Yes.

Q. And that is the fixed amount that you are talking about, is that correct? A. Yes.

Q. And that any excess over and above that amount would be cost, is that right? A. Yes.

Q. And is it your conclusion or is it your opinion that the profit already inheres in that type of a contract? A. Yes, that is correct.

Mr. DeGarmo: I wish you would let the witness answer.

The Court: Well, that is leading.

Mr. Etter: I don't think I am as good an accountant as he is, you can cross-examine.

The Court: Are you through? [1577]

Mr. Etter: Yes.

The Court: Yes, all right.



(Testimony of L. Gordon Lee.)

Cross-Examination

By Mr. DeGarmo:

Q. Mr. Lee, if you had a million dollars worth of equipment out here on a project and you were the owner of that equipment and a strike occurred and that equipment was forced to sit idle for an indefinite period of time, say 76 days, would you feel that you were made whole if you got back just the direct cost?

A. Would you explain what you mean by "direct cost"?

Q. Well, you explain what you mean by it and I will use your definition.

A. All right, the direct cost of this contract would be the labor and the materials and overhead.

The Court: I assume your question would also ask the witness to assume that this equipment was on a job where there was a fixed lump sum bid on the contract?

Mr. DeGarmo: Yes, whether there was a profit in the job or not is immaterial in my question. I am asking——

Q. I am asking you if you had, let's assume that the equipment is on a loss job and it is forced to sit idle for 76 days and you have your money and your personnel tied up for that period of time, would you consider [1578] you as owner of that equipment and you as the contractor, would you consider that if you got back just the interest on

(Testimony of L. Gordon Lee.)

your investment and the direct costs under your definition for that period of time, that you were in just as good a position as though the strike had never occurred?

A. That is the type of a question, Mr. DeGarmo, that you can't answer with a yes or no.

Q. Well, that is the type of question that counsel asked you.

A. He didn't mention equipment or the illustration that you have used.

Q. Well, I am asking you, let's assume, I am assuming a loss contract, one on which there is a known and definite loss at the time, and you are forced to sit idle for a period of 76 days with a million dollars worth of equipment tied up out there and your supervisory personnel tied up, and I am asking you if you would consider that you had been made whole if you got back just the actual direct cost, under your definition?

A. There is one point in your question, you have mentioned personnel; of course, the personnel would be part of the overhead cost.

Q. Well, you are giving us back the money that we pay them in salary. [1579]

A. Right.

Q. That is part of direct cost under your definition?

A. That is right.

Q. Now, do you consider that that is all that you are going to be entitled to and all that you would want, as the owner of that property?

A. It depends on whether the equipment could be used at another location, for one thing.

(Testimony of L. Gordon Lee.)

Q. Well, let's assume this is in the construction season in March, April and May in this country.

A. You mean, to continue that comment with your question as to the use of that equipment?

Q. Yes, to consider it you said that you would like to know whether there was some other job for it.

A. Yes, from the accounting viewpoint I would say that the equipment that is lying idle on the job during the 76-day strike period, if it had not been considered in the original bid, would be an additional cost.

Q. Well, your original bid would contemplate that equipment being tied up only "X" number of days, wouldn't it, Mr. Lee?

A. Yes, I think so.

Q. It wouldn't have contemplated it being tied up "X" number of days plus 76?

A. Well, I couldn't answer that because I wouldn't know [1580] what the bid would contemplate.

Q. Well, if the contract called for completion on a certain day, you would only contemplate your equipment being tied up to a completion date, would you not?      A. Yes.

Q. Now, with that assumption, can you answer the question?

A. Yes, I think I have already answered it.

Q. What?

A. That if during the 76-day strike period, if this equipment had to lay idle on the job, that there



(Testimony of L. Gordon Lee.)

would be a cost incurred in that investment, obviously, if it isn't recovered in any other part of this bill of particulars.

Mr. DeGarmo: I have no further questions.

The Court: Any further questions?

Mr. Etter: None.

The Court: That is all, then.

(Witness excused.)

The Court: The court will adjourn until tomorrow morning at ten o'clock. Oh, let's see, is that your last witness?

Mr. Etter: That is right.

The Court: Do you have some rebuttal?

Mr. DeGarmo: Well, I may have one witness for a very few questions, I would say fifteen minutes. [1581]

The Court: Well, we will be ready to argue the case, then, tomorrow morning?

Mr. DeGarmo: Yes, sir.

The Court: Will an hour on a side be enough?

Mr. Etter: Maybe too long.

Mr. DeGarmo: It will be a great sufficiency for me.

The Court: Well, I would like to finish it before lunch time. I think you could do that, so we will start at ten o'clock and proceed with the argument, then.

Mr. DeGarmo: I think we can.

Defendants Rest

(Whereupon, court was adjourned until ten o'clock a.m. on February 27, 1958.) [1582]

Thursday, February 27, 1958—10:00 o'Clock A.M.

(The trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit:)

### Rebuttal

The Court: For the record this morning I would like to say that in the case of Exhibit 56 a copy has been substituted to take the place of the original, which the Court inadvertently marked up in the course of the presentation of the testimony yesterday. This will be the original 56, now.

Before you start in, I might say here that you gentlemen have gone over these exhibits?

Mr. DeGarmo: I have a slight amount of re-direct.

The Court: Oh, yes, proceed then with the completion of your testimony.

Mr. DeGarmo: Yes. Mr. Goade, would you come forward, please?

ALFRED J. GOADE

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

By Mr. DeGarmo:

Q. Mr. Goade, since court yesterday afternoon have you had occasion to become familiar with Plaintiff's Exhibit 33 in this case covering Item 16 (shows paper to witness)?

A. Yes, I have.

The Court: What was that exhibit number?

Mr. DeGarmo: 33, that is the Item 16 Exhibit.

The Court: Yes.

Q. (By Mr. DeGarmo): With reference to the first page of the exhibit, Mr. Goade, will you state what is the theory or basis for the computation which is there made?

A. It is based on the actual cost per yard of concrete.

Q. Will you state, Mr. Goade, what, if any, effect upon the figures as shown upon the first page of this Exhibit 33 there would be if a larger or smaller quantity of concrete was used than was originally estimated to have been used?

A. Well, I can see that there would be no effect on the unit cost.

Q. Why is that, Mr. Goade?

A. You would have a total cost for pouring the concrete and the total number of yards poured divided into that [1584] figure would give you a unit cost figure.



(Testimony of Alfred J. Goade.)

Q. Now, have you also, Mr. Goade, since yesterday evening when we left court, had occasion to examine Plaintiff's Exhibit 56 and, in particular, that portion of 56 which appears on pages eleven and twelve, dealing with the question of labor cost of concrete? (Shows document to witness.)

A. Yes, I have.

The Court: What page is that again?

Mr. DeGarmo: Eleven and twelve, your Honor.

The Court: All right, go ahead.

Q. (By Mr. DeGarmo): Will you tell us, Mr. Goade, whether the computation made there affects in any way the accuracy of the computation which is made on the first sheet of Plaintiff's Exhibit 33?

A. I don't believe I understand.

Q. I want to know whether the computation which Mr. King made here on pages eleven and twelve, with reference to the 100-F and 100-H areas, in your opinion, affects in any way the accuracy of the computation and the per cubic yard determination as made on Plaintiff's Exhibit 33, the first page?

A. Yes, it's a different computation. The mathematical computation is correct here, as we see it, but it does bring about a different cost per cubic yard. [1585]

Q. Well, which one of the computations is the accurate one, as far as the determination of cost?

A. I would say Plaintiff's Exhibit 33 is correct.

Q. Now, will you tell us why you say that Plaintiff's Exhibit 33 is correct and the mathematical

(Testimony of Alfred J. Goade.)

calculation which you say is correct mathematically, on Plaintiff's Exhibit 56, is an incorrect one?

A. On Plaintiff's Exhibit 33 the total cost of pouring concrete is divided by the cubic yards poured, which would give you an accurate cost per yard, on page 11 of this report.

Q. By "this you are referring to Plaintiff's 56?

A. Yes, they have taken what they call an excess yardage poured based on the engineers' estimate. Actually, the excess, if there was one, should not be considered in this computation because it has no meaning on the unit cost computation.

Q. Well, when they get all through with the mathematical computation which is made upon Plaintiff's Exhibit 56, on pages eleven and twelve, what is the result as far as this case is concerned, what bearing does it have, if any?

A. Exhibit 56 shows an excess cost per yard less than Exhibit 33.

Q. Yes, I know it does, but is that excess cost which they [1586] determined mathematically, one which affects this case as far as the excess cost of the yardage actually poured, other than merely the mathematical difference between the two exhibits? Perhaps you don't understand what I mean?

A. No, I am not sure that I do.

Q. Well, you said that in Plaintiff's Exhibit 56 that as far as the mechanics of the computation, that it is correct mathematically, but you say the fact that they considered excess concrete is of no consequence. Now, I want to know if you say that is

(Testimony of Alfred J. Goade.)

of no consequence, what effect, if any, does it have upon the accuracy of Plaintiff's Exhibit 33, the per yard determination there made?

A. Well, I don't believe that the computation that they made is sound, basically sound accounting-wise.

Q. And why is that?

A. Well, because they have used figures that were based, in the first place, on an engineers' estimate and not on actual cost.

Q. Now, let me ask you something further, Mr. Goade: In the determination of yardage for paying purposes, as distinguished from yardage of concrete purchased, is there something to be considered other than the actual cost of the concrete itself? [1587]

A. Yes, there is.

Q. What is that?

A. For pay purposes, at different periods during the job you would have forming costs that would go ahead of the actual pouring of the concrete.

Q. And is that paid for as a concrete item?

A. Yes, it is.

Mr. DeGarmo: You may examine.

#### Cross-Examination

By Mr. Etter:

Q. Mr. Goade, isn't it true, in any event, on your calculation on Exhibit 33, that whether you call them excess yards or otherwise, there was a greater number of yards considered than was originally in the engineer's estimate? A. Yes.



(Testimony of Alfred J. Goade.)

Q. Isn't that correct?

A. Yes, that is correct.

Q. And isn't it a fact that those yards that you found that are on Exhibit 33 were all billed, and were billed to the AEC for payment, each yard that appears in your exhibit was billed for payment as a cubic yard to the AEC? A. Yes. [1588]

Q. Well, at least the Exhibit indicates that many and you would assume they billed them for payment, isn't that right? A. Yes.

Q. In any event, so far as price is concerned and cost is concerned, there were additional cubic yards billed to the AEC than existed in the original engineers' estimate, isn't that right? A. Yes.

Q. Beg your pardon? A. Yes.

Mr. Etter: That is all.

Mr. DeGarmo: That is all, Mr. Goade.

(Witness excused.)

Mr. DeGarmo: Call Mr. Nelson.

### RALPH NELSON

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

#### Direct Examination

By Mr. DeGarmo:

Q. Mr. Nelson, in connection with Mr. King's testimony, there was introduced in evidence yesterday Plaintiff's Exhibit 56. Did you have occasion yesterday evening to make an examination of this

(Testimony of Ralph Nelson.)

exhibit, pages eleven and twelve, as it related to the labor cost of concrete? [1589] A. Yes, sir.

Q. Now, I think you have already testified that you either assisted in or were responsible for the preparation of Plaintiff's Exhibit 33, is that correct? A. Yes, sir.

Q. Will you tell us what is the theory of the computation which Mr. King shows at pages eleven and twelve of Plaintiff's Exhibit 56?

A. In the first place, he has used the concrete that was actually delivered and paid for at that time. He gave no credit for forming that had been done ahead of the actual pouring as was computed, used to determine the method of payment.

Q. Well, his labor employed in the forming was ahead of pour?

A. Yes, sir, the labor cost is in the labor figure up to that date; therefore, you should also include it in the quantity.

Q. And by eliminating that factor he secures a lower or higher per cubic yard cost of the material before March 31?

A. He secures a higher cost at that time.

Q. For the material or for the labor prior to March 31, which tends to reduce the amount of the claim, does it not? A. Yes, sir, it does [1590]

Q. And eliminates from consideration the actual labor that was performed on forms at that time?

A. That is right.

Q. All right. Now, what else did you find with respect to this computation by Mr. King?

(Testimony of Ralph Nelson.)

A. Mr. King made a computation here based on excess pours.

Q. Did he use the same yardage figures that you used in Plaintiff's Exhibit 33, Mr. Nelson?

A. Yes, sir; he did, and then after that he used a percentage figure which he obtained by dividing the so-called excess yardage by the total yardage that had been paid for and arrived at a constant percentage figure which he then prorated over the concrete that had been purchased all through the job.

Q. What was his purpose or reason in arriving at that percentage?

A. I couldn't say. To me it makes no difference, you could do it one way or the other.

Q. All right, and after obtaining this percentage, then, he applied that, he took the engineers' estimate of concrete and took the difference between that and the actual yards of concrete and applied this percentage to that, did he not?

A. Yes, sir.

Q. And having arrived at that, at those figures, then, [1591] what did he do with them?

A. Well, in arriving at his average cost per yard up to the period of March 31, he went back and disregarded this calculation he had made. In other words, he went back to the original concrete figure.

Q. That is the estimate figure?

A. Yes; the estimate figure of concrete that had been delivered and paid for, to arrive at an average cost per yard which was higher than it would have been, that would have made a higher figure



(Testimony of Ralph Nelson.)

at that time rather than if he had used the reduced figure, reducing it by his so-called overage.

Q. All right, and what was the result of his failure to reduce both the figure before and after?

A. Well, it resulted in a higher average cost at March 31, a lesser cost from the period of June 6 until September 30, thereby resulting in a lesser excess cost per yard.

Q. Now, have you made a recomputation using his exact method but using the percentage figure as applied to both the before and after figure?

A. Yes, sir; I have.

Q. And when you did that what difference was there between that calculation and the one which you originally made on Plaintiff's Exhibit 33, as to labor?

A. There was no difference as to the total [1592] cost.

Q. You came out with the same total excess cost?

A. Yes, sir.

Q. One further thing, Mr. Nelson, in connection with the item of "Interest on Investment," Mr. King testified that instead of using the months which you used, he went back and used the month of March, I believe, of 1956, in order to secure an average of invested capital in this operation?

A. Yes, sir.

Mr. DeGarmo: Could I have No. 10, please? No, not No. 10, No. 14.

(Whereupon, the exhibit was handed to plaintiff's counsel.)

(Testimony of Ralph Nelson.)

Q. (By Mr. DeGarmo): On Plaintiff's Exhibit 48, Mr. Nelson, there are shown the month end figures for April, May, June and July. Could you give us just one more figure, for the record, and that is the March 31, 1956, figure?

A. The investment figure at March was \$147,-534.32.

Q. Now, using that figure have you made the computation to check to see whether you come out with the same figure as Mr. King's, if you use a 76-day basis instead of a 98-day basis?

A. Yes, sir.

Q. So that that is the figure that he used? [1593]

A. Yes, sir.

Mr. DeGarmo: That is all. You may examine.

#### Cross-Examination

By Mr. Etter:

Q. Mr. Nelson, so that we don't have to look for these exhibits and can move along, you remember that these were marked as Exhibits 21 and 22?

A. Yes, sir.

Q. Construction status chart? The testimony yesterday indicated when you brought your figures in that as to the 100-F area although at the end of March you had projected a completion of the concrete pour of 80%, about half of that amount had been poured, do you recall?

A. I didn't bring that figure in, but I believe that is true.

(Testimony of Ralph Nelson.)

Q. And with respect to the H area, at the end of March, I think it was, if I recall correctly, instead of 50 it was around 40, or about 10% short, do you remember? A. I don't remember.

Q. Well, it's somewhere around there. Now, with respect to particularly the F area, if 80% of the pour of concrete had been made at that time rather than 40% as existed before the strike, would your computation of [1594] loss of efficiency be the same as it is now?

A. I didn't base my computation on percentage, I based it on average cubic yards.

Q. Average costs? A. Average costs.

Q. Yes, but if all of that concrete had been poured and you were not some 40% behind at that time you would not have needed to pick that up in September, isn't that correct?

A. I don't quite get what you are driving at.

Q. Well, you had to eventually pour all that concrete, didn't you? A. Yes, sir.

Q. And your cost increased in September, didn't it? A. Yes, sir; it did.

Q. Well, then, you had an increase, then, on about 40% of this amount that should have been completed about March 31, under your estimate?

A. I still don't see where that applies to the estimate.

Q. Well, your computation as to excess cost goes to all the concrete that you poured that remained unpoured at the time of the strike, isn't that true?

Q. You would also have to apply it to that be-



(Testimony of Ralph Nelson.)

fore and that after; in other words, you can't say that it goes to one and not the other. [1595]

Q. Yes, but by reason of this failure of pour, you had running expenses for four months but you didn't have revenue coming in, did you?

A. Which four months are you talking about?

Q. Up until March 31.

A. We had revenue for January, February and March.

Q. Yes, but you were \$230,000 behind in your revenue, were you not?

A. I don't recall that figure in making my computation of this. I didn't use any revenue figures, I used average cost per yard.

Q. Well, there was testimony that revenue is based upon progress, isn't that true?

A. That is true.

Q. That is true? And this exhibit in here the other day, Exhibit 23, indicates that in March there was \$226,852 shortage in revenue coming to the project, that is, in this exhibit, so apparently there was a lack of progress, at least, as compared to revenue of almost a quarter of a million, isn't that right?

A. Yes; there would have been something affecting that.

Q. Isn't that right? So that you, in computing these figures, took the over-all figures of all the amounts of concrete and labor employed in the pouring in both areas, isn't that right? [1596]

A. I took the actual cost.

(Testimony of Ralph Nelson.)

Q. Of all of it?      A. Of the concrete?

Q. Yes; labor and material.

A. Well, in one computation we used labor and in another one we used supplies.

Q. You used supplies? Now, as far as the progress of the work was concerned, though, there was a lack of progress to the tune, at least, of \$226,000, shortage in revenue in March, isn't that right?

A. Well, yes; apparently it would apply to all the work on the job, not necessarily to concrete.

Q. That is right. So your costs, as far as your computations are concerned, include, likewise, the lack of progress up until March 31, isn't that right?

A. Yes; my figure here reflects that. The cost is high up to that point on an average yard basis. However, we have not penalized this computation in any way. We take the difference between the costs for the two periods.

Mr. Etter: That is all.

Mr. DeGarmo: That is all, Mr. Nelson.

(Witness excused.)

Mr. DeGarmo: We have no further testimony.

Mr. Etter: We have none. [1597]

The Court: Are you ready to proceed with your argument?

Mr. DeGarmo: Yes.

The Court: I might say that it is perfectly obvious to counsel, but there are only a few of these items of considerable amount on which there is a real dispute. I think the equipment rental is one of

the ones on which there is a good deal of difference here, loss of profits, and this item has just been under discussion here, the efficiency loss.

All right, you may proceed.

(Closing argument of counsel.)

(Whereupon, the court was adjourned until 2:00 o'clock p.m. on February 27, 1958.) [1598]

Thursday, February 27, 1958—2:00 o'Clock P.M.

(The trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit.)

(Closing argument of counsel continued.)

## OPINION

The Court: I think, first, I should say that I believe everybody is agreed that this award or amount that the Court should fix in this case should be on a basis of compensation, or a compensatory basis. There isn't involved here any element of punitive damages or particular, then. We don't have punitive damages in this State, but even if we did, I should say that this is not a case in which it could be properly applied because here there is no element of malice or anything of that sort. I think the leaders of these unions acted in the utmost good faith and fully believed, and probably still believe, that they were acting within their rights when they called this strike, so, we have got here no cause for



increasing these damages or trying to increase them above what is fair compensation to the plaintiff, above what is the loss sustained by the [1599] plaintiff, by reason of the breach of the labor contract on the part of the defendant. Of course, as far as the defendants are concerned, it is merely an error of judgment. Of course, if this case is carried up, as I suspect it might be, and is reversed, then, it would turn out to be an error of judgment on the part of the Court. I might say, too, by way of introduction that I am going to keep my explanation as to why I am making these findings, trying to keep it to a minimum. The longer I am on the trial bench it is borne home to me that lengthy explanations are not of much use because the winner is only interested in how much you are doing for him and it is the fact that the loser is not satisfied with your explanation, anyway. He always thinks that they are cockeyed, if I may use the venacular.

First of all, of course, we have this problem of the length of time that we may fairly say that the contractor was delayed by reason of this strike. Now, I think it goes without saying that you can't take a period of time and strike seventy-six days out of the middle of a big contract and not do damage, and serious damage, to the contractor, not only for the seventy-six days but beyond that point, because you can't pick up again, as has been brought out here and go on with the same dispatch and efficiency that you would have if the strike had not occurred. The question, then, or the problem, that I have is to determine how much time, [1600] extended time,

should be allowed as to the basis of these various computations, where the time element is a factor. I think that I have no quarrel with the method that has been adopted here by the plaintiff, as exemplified in their Exhibit 24, this revenue progress graph. I do think, however, that it is, perhaps, shall I say, over-optimistic, or I think it overlooks one factor that I think should be considered here. At the time this strike occurred the plaintiff was eighteen days behind schedule, that is, the actual revenues received were eighteen days behind the original scheduled revenue. Those eighteen days had been taken out, of course, and the defendants have not, in his computations, been charged with the eighteen days, but I am not altogether satisfied with the explanations that have been given here, and it is my duty, as the trier of the facts, to determine what credit and weight shall be given to the testimony of witnesses with these explanations.

In the first place, I think that engineers as competent and as capable and experienced as those of Morrison-Knudsen would not completely overlook the weather element in estimating a schedule here in setting up a progress schedule for work to be done December, January, February and March. In the tri-city area there have just been two very severe winters, and very cold and unusually cold weather in not only the winter months, but in early [1601] spring months, in that area. And I notice from this chart that not only was the plaintiff eighteen days behind when the strike started but the two lines were diverging and continuing to diverge. I don't

know what accounts for it here, there is probably an explanation of the fact that they were actually ahead of schedule slightly during January and just about on schedule near the first of February and then there is a sharp diversion, the performance line starts to fall below the schedule line and it continues to fall and they continue to separate at what appears to be about the same rate right until about the time the strike started. Now, it doesn't seem to me that it would be realistic for me to assume that had no strike occurred that there would have been a sharp, unaccountable jump in that lower line that would have immediately carried it on a parallel with the other one. In other words, that the rate of fall behind would have immediately stopped and would have reversed and there had no strike occurred, instead of being in a position of falling behind at a fairly constant rate the contractor would suddenly and miraculously have started to parallel the scheduled line; and I think it is fair to assume that there would have been some time consumed there, some appreciable time to get the contractor in a position where he would have been performing according to the scheduled program.

Now, in this and in a good many other instances here [1602] I am not going to attempt to adopt some theory by which I can say, "Yes, this is \$100.05 or fifty-six or seven cents." I don't think in a case of this kind it is possible to determine with dollars and cents accuracy. As Mr. Carey has so clearly pointed out, the plaintiffs have not been able to do that as the lawsuit progressed here and I don't



think they should expect to Court to do so. There are some of these things that are matters of estimates. Of course, I want to say just as an aside, that I think Mr. DeGarmo is correct in saying that all that is required of him is to prove things with reasonable certainty that one who does damage to another, either in tort or by contract, is not in a position to say that, "You can't prove it by dollar accuracy and, therefore, you can't prove it by anything."

I think that, and I admit that it simply has to be an arbitrary determination. I think that instead of adding twenty-two days that it is fair, then, to let the plaintiff add thirteen days to the actual strike period of seventy-six days, which would make an extended period for the basis of computation of eighty-nine days, approximately, I will say "approximately," so that the result will be that there will be a ten per cent reduction in all those items of claimed damage of the plaintiff to which the time element applies.

Now, taking the items up separately here, I will not [1603] discuss the ones on which the amount is stipulated, concerning which there is no dispute because it goes without saying that in the findings they will be allowed as stipulated.

On Item No. 2, which is "Office Rent, Furnishings and Engineering Department," I think, perhaps, that the basis of computation may be somewhat high but there hasn't been any other offered here except the proposition that nothing should be allowed; I believe the defendant takes the position

that nothing should be allowed. The claim is \$1,156 for the plaintiff, and I am not impressed by the fact that because of internal bookkeeping reasons, or accounting reasons, these items haven't been charged to this particular project. I don't think that that is controlling and I don't think it is controlling in any instance. It may be of some probative value in some instances, as rent of equipment, but, certainly, it isn't something that should bind the plaintiff here, particularly, as has been pointed out since the plaintiff, after all, is Morrison-Knudsen Company and not a contractor on a single contract in the tri-city area, and whatever loss Morrison-Knudsen may have sustained is compensable and allowance should be made for it, even though it may not show up at all on the books of the company for their accounting purposes, and so that item will be allowed.

Mr. Etter: Is that Item 2? [1604]

The Court: That is Item 2. I believe on the transportation, I believe I misspoke on that. I think on Item 2 the plaintiff claimed \$1,168.38 and the defendant conceded two hundred eighty-two forty-eight, I think.

Mr. DeGarmo: That is correct, on the seventy-six-day basis.

The Court: Then, on the Item 3, which is "Transportation," as was indicated in Mr. DeGarmo's argument, I don't think they should be required to prove that by their books or by documentary proof, but I think there should be some direct evidence of it, something that goes beyond hearsay, and I think

the only proof on which I could base a finding on that item is the testimony as to transportation by the witness, Reed, which, if my computation is correct, including his long distance travel and his local travel, if I may put it that way, was \$344.00. Now, as Mr. DeGarmo pointed out, there, undoubtedly, must have been some other travel there. My conscience is eased a little bit on that score, but I think ten cents a mile is too high for mere operation of a vehicle. There isn't any evidence in the record here, and I don't know whether I can take judicial notice of government rates, but the government allows ten cents a mile for full compensation to cover gasoline and oil and license and taxes and insurance and everything, new tires, and on a new vehicle, of course, that may be a little [1605] low, but it is supposed to be on a compensatory basis for everything, but ten cents a mile is too much for gas and oiling the machine for a little while, so that I think that my allowance to Mr. Reed is higher than it should be.

Mr. Carey: May I inquire, your Honor, what is the final amount on that?

The Court: \$344.00. What I am intending to allow is Mr. Reed's claim.

Mr. Carey: Yes, I understand.

The Court: And, of course, if my figures are wrong here, you may correct me in making up the findings.

Then the item of "Telephone," the amount claimed was \$625.86. The defendants conceded a less amount, based on the lesser period. I think that



item will be allowed. However, with the ten per cent reduction that I have indicated here. I might say I may be mistaken about that but it is my understanding that the items which would be affected by the ten per cent reduction by reason of my reducing the delay factor here due to the strike would be Item 1, "Overhead-Salaries during Strike Period"; 2, "Office Rent, Furnishings and Engineering"; Item 8, "Equipment Rentals"; Item 10, "Interest on Investment"; Item 12, "General Administrative Expense"; Item 15, "Maintenance of General Electric Offices"; and Item 16, "Efficiency Loss for Labor and Supplies"; and I suppose [1606] Item 17.

Mr. DeGarmo: Item 17 and Item 1 are agreed items.

The Court: They are agreed items, I think that is correct. I overlooked that, those two are agreed, yes, I think that is true. I was just considering whether they would be in the nature of continuing services or items.

Now, one of the troublesome items here, of course, is the Item No. 8, "Equipment Rentals." There, I think, without going into too much detail I think that the basis of the book rentals of Morrison-Knudsen are too low. I think that the rentals on the basis of what, in effect, would be charged or would be received if an owner owned a vehicle and rented them out to another is too high and I have decided on that item an allowance of \$21,043.13. I may say here that in announcing these items I have made some notes here as the argument progressed, and

I am giving these amounts without the ten per cent reduction, and if there is, they are the ones to which the ten per cent time decrease applies; the figures I give here should be reduced ten per cent. I think I have already done that, or made an announcement in one of these hearings that it should be.

Mr. DeGarmo: Do I understand, then, that the \$21,043.13 would be reduced a further ten per cent?

The Court: Yes, that is correct, and that will be true as to any of these to which that element applies.

Now, Item No. 9 was withdrawn, of course. No. 10 [1607] "Interest on Investment" will be allowed in the amount claimed by the plaintiff, which is eighteen hundred four sixty-eight.

Mr. DeGarmo: That would be less ten per cent?

The Court: Yes; less ten per cent.

Mr. Etter: We had better announce these as we go along.

The Court: All right, well, that would be No. 10. And No. 12 is "General Administrative Expense"; that will be allowed in the amount claimed by the plaintiff, \$19,257, less ten per cent. Item 13 is stipulated, is it not?

Mr. DeGarmo: Yes; it is.

Mr. Etter: Yes.

The Court: And Item 14 is stipulated. 15 will be allowed in the amount claimed by the plaintiff, that is, "Maintaining General Electric Offices in the area" in the amount of \$531.76, less the ten per cent. And "Efficiency Loss for Labor and Supplies"

will be allowed in the amount of \$84,370.98, less ten per cent.

Mr. Carey: I didn't get that number, your Honor, or that amount.

The Court: \$84,370.98, less ten per cent.

On the matter of whether the plaintiff is entitled to a loss of profit, we no longer have, of course, Mr. DeGarmo feels that it wouldn't be any duplication at all, but [1608] any concern the Court may have had about that so far as the rental of vehicles is concerned doesn't apply now, of course, because I have not allowed that, as I feel, on a profit basis. I do think this, that we should keep in mind that what we are trying to do here is to compensate the plaintiff for the loss sustained by this strike. Now, if the job had been performed, as I mentioned in the earlier stages of the trial, I believe, it seems to me that if the job had been completed on time, if it had been completed according to schedule the same day that they intended, as it was planned to complete it when they started out, and all the items of additional expense to them they had been put to by reason of the strike had been allowed them, we will say that they had to hire more vehicles, they had to hire more men, they had to accelerate and step up this job, they had to complete it and they did complete it on time, and they are paid for their actual extra expenses by what occurred, I don't think they would have been entitled to this additional; I don't think they would have been compensated where they haven't completed it on time where, as I have found here, there is an additional eighty-nine days, or a



factor of approximately that, that they have been caused to incur because of the strike. I think, then, that any part of their set-up here or part of their damages where the equipment could have been used on another job, [1609] not that it would have been or anything of the sort, but where equipment or supplies or personnel or administrative set-up ready for service is held idle or held less than its full use for that period of delay, I think the plaintiff should be entitled to a ten per cent, on the other hand, and probably profit on those items. Now, I don't know whether I make myself clear or not, but here, for instance, let's take the element here of "Legal Expense." Why should ten per cent be added to the \$750 legal expense because this contract was delayed for a period of seventy-nine days, we will say? Or because extra strength cement was used in the amount of \$675, why should ten per cent be added to that? On the other hand, clearly, I think, in the terms of "Equipment Rentals" where I haven't allowed them any profit for loss of use of that equipment, I think that equipment was standing idle and they lost a period of use for it, I think they are entitled to the ten per cent acceleration of added profit on that item.

Now, I think that the items on which profit should be allowed instead of allowing it on all of them, as plaintiff has claimed, I am reading now from Plaintiff's Exhibit 49, I think, would be Item 1, Item 2, Items 8, 10, 12, 15, 16 and 17, and I hope on that basis that the riddle of fixing out and drafting findings and judgment will not be too difficult. I might

suggest here, Mr. DeGarmo, I should [1610] assume that you would take the initiative here in preparing these documents but I don't believe that you should be required to sponsor them or put on that they are presented by you because you should be free to, at least, cross-appeal on these items, if the plaintiff appeals, because I think they should be the findings of the Court, and I will simply ask you, as an accommodation to me to prepare them for me.

Mr. DeGarmo: I will be glad to do that.

The Court: Just put on an acknowledgment of service by either side.

Mr. Etter: Your Honor, did you say Item 16? I am having a little difficulty, maybe I am dumb; ten per cent on that is profit? How could the use of vehicles be made a profit? That is just the loss, as I understand it, of labor that was working there. Is there a profit on that?

Mr. DeGarmo: Why, surely.

Mr. Etter: Well, why? I can't follow you.

The Court: It was somewhat of a puzzle to me, I will admit that, not in this connection, of course, but I thought the time element did enter into it.

Mr. Etter: They had an efficiency loss of a cost element of labor. Now, once they are paid that, would that be profitable, that ten per cent profit on that labor?

Mr. DeGarmo: Well, every item of labor that we performed requires general administrative expense. [1611]

Mr. Etter: Yes, but you got your profit on the labor and, now, you got the efficiency loss back.

The Court: I think you are right, the efficiency loss for labor and supplies on my theory should not be. The general administration, yes, I have allowed it on that.

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[Endorsed]: Filed July 7, 1958. [1612]

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United States District Court, Eastern District of  
Washington, Southern Division

No. 1105

MORRISON-KNUDSEN COMPANY, INC., a  
Corporation,

Plaintiff-Appellee,

vs.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839; and INTERNA-  
TIONAL UNION OF OPERATING EN-  
GINEERS, LOCAL No. 370,

Defendants-Appellants.

### CERTIFICATE OF CLERK

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the original documents filed in the above-entitled cause, to wit:



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4/14/58	Supplemental Findings of Fact and Conclusions of Law Upon the Issue of Damages.....	144-146
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4/21/58	Order Denying Motion to Make and Enter Defendants' Proposed Findings of Fact.....	166-167
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4/23/58	Plaintiff's Motion for Amendment of Supplemental Findings of Fact and Conclusions of Law Upon Issue of Damages, and Judgment .....	169-171
5/ 8/58	Order Upon Motion for Additional or Supplemental Findings of Fact and Conclusions of Law, and Amendment of Judgment...	172-174
5/12/58	Notice of Appeal.....	175-176
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6/ 3/58—Order Extending Time to File  
and Docket Record on Appeal. . . . 182

7/ 7/58—Reporter's Transcript of Proceed-  
ing at the Trial (Separately  
bound) . . . . . 183-1617

All exhibits received in evidence  
at the trial (Separately bound).

Plaintiff's Exhibits:

No. 1—Copy of Contract Between M. K. and  
A. E. C.

2—Agreement, AGC and Teamsters.

3—Agreement, AGC and Operating En-  
gineers.

Defendant's Exhibits:

No. 4—Agreement, AGC and Operating En-  
gineers.

5—Withdrawn.

Plaintiff's Exhibits:

No. 6—Constructive Collective Bargaining  
Agreements.

Defendant's Exhibits:

No. 7—Hanford Contract Proposal.

Plaintiff's Exhibits:

No. 8—Letter, March 30, 1956.

9—Letter, April 3, 1956.

Defendant's Exhibits:

No. 10—Copy letter, 3/8/56.

Plaintiff's Exhibits:

No. 11—Calendar, 1955, 1956, 1957.

Defendant's Exhibits:

No. 12—Letter, 12/15/55, Hanford Contractor's  
Negotiating Committee.

13—Letter, 1/13/56, Hanford Contractor's  
Negotiating Committee.

14—Memo Agreement, International Union  
Operating Engineers 370 and Hanford  
Contractors Negotiating Committee.

15—3/2/56—Letter, Hanford Cont. Negot.  
Committee.

16—12/29/55—Letter, Hanford Cont. Negot.  
Committee.

Plaintiff's Exhibits:

No. 17—School District Contract.

18—School District Contract.

19—Ordinance and Amendment.

20—Copies of letter from Secretary of War.

21—Construction Status Chart, 100-F Area.

22—Construction Status Chart, 100-H Area.

23—Revenue Tabulation.

24—Graph of Schedules and Production.

25—Statement of Delay Due to Strike.

26—List of Overhead Salaries (Item 1).

27—List of Cost of Transportation (Item 3).

28—List of Re-employment Costs.

29—List of Equipment Rental.

30—List of General Administrative Ex-  
pense.

31—Cost of Extra Strength Concrete.

Plaintiff's Exhibits—(Continued):

- 32—List of Extra Cost Due to Wage Increase.
- 33—List of Efficiency Loss.
- 34—Contractors Equipment Ownership Expense.
- 35—Compilation of Rental Rates.
- 36—List of Telephone Expense.
- 37—List of Office Maintenance Expense.
- 38—Schedule of Transportation and Isolation Pay.
- 39—Expenses of Lee Knack.
- 40—Voucher for Telephone Bill.
- 41—Voucher for Telephone Bill.
- 42—Voucher for Telephone Bill.
- 43—Voucher for Telephone Bill.
- 44—Voucher for Area Telephone.
- 45—List of Extra Office Cost.
- 46—List of Telephone Expense.
- 47—Statement of Attorney Fee.
- 48—Compilation of Interest on Investment.
- 49—Compilation of Loss of Profits.

Defendant Teamster's Exhibit:

- No. 50—DeGarmo's Letter of 4/27/56.

Plaintiff's Exhibits:

- No. 51—Bulletin on Equipment Accounting Procedure.
- 52—Balance Sheet.
- 53—Computation of General Administrative Expense.
- 54—Computation of Excess Labor Cost.



Plaintiff's Exhibits—(Continued):

55—Computation of Attorney Fee.

Defendant's Exhibit:

No. 56—Audit of Morris, Lee & Co.

and that the same constitute the record for hearing of the appeal from the Judgment of the United States District Court for the Eastern District of Washington, as called for in appellant's Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District, this 11th day of July, 1958.

[Seal]      /s/ STANLEY D. TAYLOR,  
Clerk, U. S. District Court, Eastern District of  
Washington.

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No. 16102. United States Court of Appeals for the Ninth Circuit. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, Appellants, vs. Morrison-Knudsen Company, Inc., a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed: July 18, 1958.

Docketed: July 21, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

Civil Action No. 16102

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839, and INTERNA-  
TIONAL UNION OF OPERATING EN-  
GINEERS, LOCAL No. 370,

Appellants,

vs.

MORRISON-KNUDSEN COMPANY, INC., a  
Corporation,

Appellee.

APPELLANTS' POINTS ON APPEAL

I.

The Contract between Morrison-Knudsen Company, appellee, and Atomic Energy Commission dated November 25, 1955, was to be performed wholly within the limits of Hanford Atomic Energy Project (Hanford area), a Federal enclave or reserve acquired and used by the Federal Government for purposes of national defense and incidental activities. That area, as a matter of law, is not part of the territory described in the two labor contracts for the alleged breaches of which appellee is claiming damages.

## II.

In the alternative, if Point I is not sustained as stated, then the trial court was in error in striking appellants' affirmative defense and in denying appellants' claim that as a matter of fact when negotiating said labor contracts the parties did not intend to include the Hanford area as part of the territory covered by the labor contracts, because the term "Benton County" as used was intended to mean only that part of Benton County that remained after the Federal Government had severed the lands constituting the Federal reserve from Benton County as it existed prior to the Federal acquisition.

## III.

The trial court was in error in holding that the appellee had proved a breach of either of the labor contracts involved, but should have held that there was a complete failure of proof because:

(a) Morrison-Knudsen Company, appellee, is not a party to either of the labor contracts involved.

(b) Morrison-Knudsen Company, appellee, itself precipitated the work stoppage or strike which it claims resulted in damages to it by summarily refusing to pay isolation pay and furnish bus transportation in violation of its commitment to both the Atomic Energy Commission and the unions to continue the conditions prevailing when on November 28, 1955, it commenced the performance of its contract with the Atomic Energy Commission.



(c) If Morrison-Knudsen Company, appellee, is a party to the two labor contracts which it now claims became applicable to its work in the Hanford area, nevertheless, it wholly failed to comply with the provisions of those contracts by making written demand for arbitration when the dispute arose respecting its commitment to continue to pay isolation pay and to furnish bus transportation.

#### IV.

Morrison-Knudsen Company, appellee, failed to prove any joint and several liability in the amount of \$147,284.41, or in any amount. The evidence fails to establish what amount, if any, is properly chargeable to Teamsters Local 839 and what amount, if any, is properly chargeable to Engineers Local 370. The failure to make such proof is fatal to appellee's case, because Teamsters Local 839 was not a party to the contract between Associated General Contractors and Operating Engineers Local 370 and, likewise, Operating Engineers Local 370 was not a party to the contract between Associated General Contractors and Teamsters Local 839.

#### V.

Assuming, but not admitting, that Morrison-Knudsen Company, appellee, did prove its right to recover damages in some amount against one or the other, or both, of the appellants, nevertheless, the award of \$147,284.41 is excessive. The evidence does not sustain the allowances made by the trial court

for Items 1, 8, 12, 16 and 11 shown on plaintiff's Exhibit 49:

Item 1. Overhead salaries during strike period claimed and allowed in the amount of \$13,389.00.

Item 8. Equipment rentals claimed in the amount of \$27,043.13 and allowed in the amount of \$18,938.82.

Item 12. General administrative expense claimed in the amount of \$19,257.00 and allowed in the amount of \$17,331.30.

Item 16. Efficiency loss for labor and supplies claimed in the amount of \$89,370.98 and allowed in the amount of \$75,933.89.

Item 11. Loss of profits claimed in the amount of \$16,592.34 and allowed in the amount of \$5,936.29.

BASSETT, DAVIES &  
ROBERTS,

/s/ STEPHEN V. CAREY,  
Attorneys for Appellant, International Brotherhood  
of Teamsters, Chauffeurs, Warehousemen and  
Helpers of America, Local No. 839.

/s/ R. MAX ETTER,  
Attorney for Appellant, International Union of Op-  
erating Engineers, Local No. 370.

Receipt of copy acknowledged.

[Endorsed]: Filed September 9, 1958.